UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

ý ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2013

Or

o TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission file number: 000-49799

OVERSTOCK.COM, INC.
(Exact name of registrant as specified in its charter)

| | |
|---|---|
| Delaware | 87-0634302 |
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification Number) |
| 6350 South 3000 East Salt Lake City, Utah 84121 | (801) 947-3100 |
| (Address, including zip code, of Registrant's principal executive offices) | (Registrant's telephone number, including area code) |

Securities registered pursuant to Section 12(b) of the Act:

| Title of Each Class | Name of Each Exchange on Which Registered |
|---|---|
| Common Stock, $0.0001 par value | Nasdaq Global Market |

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes o No ý

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes o No ý

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), (2) has been subject to such filing requirements for the past 90 days. Yes ý No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ý No o

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Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K, or any amendment to this Form 10-K. ý
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer,” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

| | |
|---|---|
| Large accelerated filer o | Accelerated filer x |
| Non-accelerated filer o<br>(Do not check if a smaller reporting company) | Smaller reporting company o |

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the act). Yes o No ý
The aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second quarter (June 30, 2013), was approximately $255.8 million based upon the last sales price reported by Nasdaq. For purposes of this disclosure, shares of Common Stock held by persons who hold more than 5% of the outstanding shares of Common Stock and shares held by officers and directors of the registrant have been excluded in that such persons may be deemed to be affiliates. This determination is not necessarily conclusive.
There were 23,959,419 shares of the Registrant’s common stock, par value $0.0001, outstanding on February 19, 2014.
DOCUMENTS INCORPORATED BY REFERENCE
Certain information required by Part III of Form 10-K is incorporated by reference to the Registrant's proxy statement for the 2014 Annual Stockholders Meeting, which will be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year to which this Report relates.

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SPECIAL CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K and the documents incorporated herein by reference, as well as our other public documents and statements our officers and representatives may make from time to time, contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements are therefore entitled to the protection of the safe harbor provisions of these laws. These forward-looking statements involve risks and uncertainties, and relate to future events or our future financial or operating performance. The forward-looking statements include all statements other than statements of historical fact, including, without limitation, all statements regarding:

- the anticipated benefits and risks of our business and plans;
- our ability to attract and retain customers in a cost-efficient manner;
- the effectiveness of our marketing;
- our future operating and financial results, including any projections of revenue, capital expenditures or other financial measures or amounts;
- our decision to accept bitcoins as an acceptable payment for the goods and services we sell and our expectations regarding the advantages and risks of doing so;
- our plans to acquire and hold bitcoins and our expectations regarding the advantages and risks of doing so;
- the competition we face and will face in our business;
- the effects of government regulation;
- our future capital requirements and our ability to satisfy our capital needs;
- our expectations regarding the adequacy of our liquidity;
- our ability to retire or refinance any debt we may have;
- our plans for international markets, our expectations for our international sales efforts and the anticipated results of international operations;
- our plans for changes to our business;
- our beliefs regarding current or future litigation or regulatory actions;
- our beliefs and expectations regarding existing and future tax laws and related laws and the application of those laws to our business;
- our beliefs regarding the adequacy of our insurance coverage;
- our beliefs regarding the adequacy and anticipated functionality of our infrastructure, including our backup facilities and beliefs regarding the adequacy of our disaster planning;
- our beliefs regarding our cybersecurity efforts and measures;
- our belief that we can meet our published product shipping standards even during periods of relatively high sales activity;
- our belief that we can maintain or improve upon customer service levels that we and our customers consider acceptable;
- our beliefs regarding the adequacy of our order processing systems and our fulfillment and distribution capabilities;
- our beliefs and expectations regarding the adequacy of our office and warehouse facilities and any plans for additional or modified office or warehouse facilities;
- our expectations regarding our other businesses including our car listing service, our community site and future other businesses and the anticipated functionality and results of operations of them;
- our belief that we and our fulfillment partners will be able to maintain inventory levels at appropriate levels despite the seasonal nature of our business;
- our belief that our sales through other ecommerce marketplace channels will be successful and will become an important part of our business; and
- our belief that we can successfully offer and sell a constantly changing mix of products and services.

Further, in some cases, you can identify forward-looking statements by terminology such as may, will, could, should, likely, expect, plan, seek, intend, anticipate, project, believe, estimate, predict, potential, goal, strategy, future or continue, the negative of such terms or other comparable terminology. These statements are only predictions. Actual events or results may differ materially from those contemplated by forward-looking statements for a variety of reasons, including among others:

- changes in U.S. and global economic conditions and consumer spending;
- world events;
- the rate of growth of the Internet and online commerce, and the occurrence of any event that would discourage or prevent consumers from shopping online;
- any failure to maintain our existing relationships or build new relationships with fulfillment partners on acceptable terms;

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- any difficulties we may encounter maintaining optimal levels of product quality and selection or in attracting sufficient consumer interest in our product offerings;
- modifications we may make to our business model from time to time, including aspects relating to our product mix and the mix of direct/fulfillment partner sourcing of the products we offer;
- the mix of products purchased by our customers;
- problems with cyber security or data breaches or the costs of preventing or responding to any such problems;
- problems with or affecting our credit card processors, including cyber-attacks, Internet or other infrastructure or communications impairment or other events that could interrupt the normal operation of the credit card processors;
- problems with the facility where substantially all of our computer and communications hardware is located or other problems that result in the unavailability of our Website or reduced performance of our transaction systems;
- difficulties we may have in responding to technological changes;
- problems with fraudulent purchases;
- problems we may encounter as a result of the listing or sale of pirated, counterfeit or illegal items by third parties;
- difficulties we may have financing our operations or expansion with either internally generated funds or external sources of financing;
- the extent to which we owe income or sales taxes or are required to collect sales taxes or to modify our business model in order to avoid being required to collect sales taxes;
- any difficulties we may encounter as a consequence of accepting or holding bitcoins, whether as a result of regulatory or legal issues, technological issues, value fluctuations, lack of widespread adoption of bitcoins as an acceptable medium of exchange or otherwise;
- competition, including competition from well-established competitors including Amazon, and from others including competitors with business models that may include extremely rapid delivery capabilities;
- difficulties with the management of our growth and any periods in which we fail to grow in accordance with our plans;
- fluctuations in our operating results;
- our efforts to expand internationally;
- our efforts to offer additional services to our customers, including insurance products and consumer financing;
- the outcomes of legal proceedings, investigations and claims, including the outcome of the lawsuit and judgment against us by the District Attorneys of a number of California counties described in this report;
- our inability to optimize our warehouse operations;
- risks of inventory management and seasonality; and
- the other risks described in this report or in our other public filings.

In evaluating all forward-looking statements, you should specifically consider the risks outlined above and in this Form 10-K in Part I, Item 1A under the caption "Risk Factors" and elsewhere in this report. These factors may cause our actual results to differ materially from those contemplated by any forward-looking statement. Except as otherwise required by law, we expressly disclaim any obligation to release publicly any update or revisions to any forward-looking statements to reflect any changes in our expectations or any change in events, conditions or circumstances on which any of our forward-looking statements are based. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements or other events.

These forward-looking statements speak only as of the date of this report and, except as required by law, we undertake no obligation to update forward-looking statements to reflect events or circumstances occurring after the date of this report.

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# PART I

## ITEM 1. BUSINESS

The following description of our business contains forward-looking statements relating to future events or our future financial or operating performance that involve risks and uncertainties, as set forth above under "Special Note Regarding Forward-Looking Statements." Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors described in this 10-K, including those set forth in the Special Note Regarding Forward-Looking Statements or in Section 1A under the heading "Risk Factors" or elsewhere in this Form 10-K.

### Introduction

We are an online retailer offering discount brand name, non-brand name and closeout merchandise, including furniture, home decor, bedding and bath, housewares, jewelry and watches, apparel and designer accessories, electronics and computers, and sporting goods, among other products. We also sell hundreds of thousands of best seller and current run books, magazines, CDs, DVDs and video games ("BMMG"). We sell these products through our Internet websites located at www.overstock.com, www.o.co and www.o.biz ("Website"). Although our three websites are located at different domain addresses, the technology and equipment and processes supporting the Website and the process of order fulfillment described herein are the same for all three websites.

Our company, based in Salt Lake City, Utah, was founded in 1997. We launched our initial website in March 1999. Our Website offers our customers an opportunity to shop for bargains conveniently, while offering our suppliers an alternative inventory liquidation or sales channel. We continually add new, and sometimes limited, inventory to our Website in order to create an atmosphere that encourages customers to visit frequently and purchase products before our inventory sells out. We sell products primarily in the United States.

As used herein, "Overstock," "Overstock.com," "O.co," "we," "our" and similar terms include Overstock.com, Inc. and its subsidiaries, unless the context indicates otherwise.

### Our Business

We deal primarily in discount, replenishable and closeout merchandise and use the Internet to aggregate both supply and demand to create an efficient marketplace for selling these products. We provide manufacturers with a one-stop liquidation channel to sell both large and small quantities of excess, closeout and replenishable inventory without disrupting sales through traditional channels. The merchandise offered on our Website is from a variety of sources including well-known, brand-name manufacturers. We have organized our shopping business (sales of product offered through the Shopping Section of our Website) into two principal segments—a "direct" business and a "fulfillment partner" business. We currently offer approximately 491,000 non-BMMG products and approximately 805,000 BMMG products. Consumers and businesses are able to access and purchase our products 24 hours a day from the convenience of a computer, or Internet-enabled mobile device. Our team of customer service representatives assists customers by telephone, instant online chat and e-mail. We also derive revenue from other businesses, advertising products or services on our Website. Nearly all of our sales are to customers located in the United States. During the years ended December 31, 2013 and 2012 no single customer accounted for more than 1% of our total net revenue.

#### Direct business

Our direct business includes sales made to individual consumers and businesses, which are fulfilled primarily from our warehouse in Salt Lake City, Utah. During the year ended December 31, 2013, we fulfilled approximately 12% of our order volume through our warehouse which generally ships between 3,000 and 5,000 packages per day and up to approximately 6,000 orders per day during peak periods, using overlapping daily shifts.

#### Fulfillment partner business

For our fulfillment partner business, we sell merchandise of other retailers, cataloguers or manufacturers ("fulfillment partners") primarily through our Website. We are considered to be the primary obligor for the majority of these sales transactions and we record revenue from the majority of these sales transactions on a gross basis. Our use of the term "partner" or "fulfillment partner" does not mean that we have formed any legal partnerships with any of our fulfillment partners. We currently have relationships with approximately 2,400 third parties who supply approximately 488,000 non-BMMG products, as well as most of the BMMG products, on our Website. These third party fulfillment partners perform essentially the same fulfillment operations as our warehouses, such as order picking and shipping;

however, we handle returns and customer service related to substantially all orders placed through our Website. Revenue generated from sales on our Shopping site from both the direct and fulfillment partner businesses is recorded net of returns, coupons and other discounts.

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Both direct and fulfillment partner revenues are seasonal, with revenues historically being the highest in the fourth quarter, which ends December 31, reflecting higher consumer holiday spending. We anticipate this will continue in the foreseeable future. To the extent possible we maintain supplier relationships, and seek new supplier relationships, for both our direct and fulfillment partner businesses, and also use our working capital, to ensure a continuous allotment of product offerings for our customers. Because a portion of our product offerings are closeout merchandise, some of our suppliers cannot supply products to us on a continuous basis.

Generally, we require verification of receipt of payment, or authorization from credit card or other payment vendors whose services we offer to our customers (such as PayPal and BillMeLater), before we ship products to consumers or business purchasers. From time to time we grant credit to our business purchasers with normal credit terms (typically 30 days). For sales in our fulfillment partner business, we generally receive payments from our customers before our payments to our suppliers are due.

Other offerings

Within our website, we offer additional products or services that complement our primary offerings, but are not significant to our revenues. These include:

- Worldstock Fair Trade, a store within our website that offers handcrafted products made by artisans all over the world, which emphasizes sustainability, fairness, and transparency, and which we attempt to run at 0% profit by donating net profits to fund philanthropic projects in several countries, including Guatemala, Kenya, Malawi, and Nepal;

- Main Street Revolution, a store within our website that features products from small businesses across the United States who offer their products using our national marketing and distribution channels;

- a consignment service for suppliers where the suppliers' merchandise is stored in and shipped from our warehouses;

- ecommerce marketplace channels, where some of our products are offered for sale in on-line marketplaces of other Internet retailers' websites;

- our international business where we offer products to customers outside the United States using U.S.-based third party logistics providers (we do not have sales operations outside the U.S.); and

- an online car listing service which allows sellers to list vehicles for sale and allows buyers to review vehicle descriptions and post offers to purchase, and provides the means for prospective purchasers to contact sellers for further information and negotiations on the purchase of an advertised vehicle.

Manufacturer, Supplier and Distribution Relationships

To date, we have not entered into contracts with manufacturers or other suppliers that guarantee the availability of merchandise for a set duration. Our manufacturer and supplier relationships are based on historical experience with manufacturers and other suppliers and do not obligate or entitle us to receive merchandise on a long-term or short-term basis. In our direct business, we purchase the products from manufacturers or other suppliers using standard purchase orders. Generally, suppliers do not control the terms under which products are sold through our Website.

Products

Our Website Shopping section is organized into 25 main product lines: For the Home, Furniture, Bedding & Bath, Clothing & Shoes, Electronics, Jewelry, Watches, Sports & Outdoors, Luggage & Bags, Worldstock Fair Trade, Health & Beauty, Baby, Crafts & Sewing, Office, Gifts & Flowers, Toys & Hobbies, Pets, Main Street Revolution, Emergency Preparedness, As Seen on TV, Business Supplies, Cars, Sales and Promotions, Books Movies Music Games and Farmers Market. Worldstock Fair Trade is our socially-responsible, online marketplace through which artisans in the United States and around the world can sell their products and gain access to a broader market. We also have specialty departments, such as Main Street Revolution and Farmers Market, which enable small businesses and individual producers to offer their products to a mass audience by selling on our websites. From time to time, as the number of products and product categories change, we may reorganize our departments and/or categories to better reflect our current product offerings.

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For the years ended December 31, 2013, 2012 and 2011, the percentages of gross revenues contributed by similar classes of products were as follows:

| Product Lines | 2013 | | 2012 | | 2011 | |
|---|---|---|---|---|---|---|
| Home and garden(1) | 72 | % | 66 | % | 58 | % |
| Jewelry, watches, clothing and accessories | 13 | % | 16 | % | 20 | % |
| BMMG, electronics and computers | 4 | % | 6 | % | 10 | % |
| Other | 11 | % | 12 | % | 12 | % |
| Total | 100 | % | 100 | % | 100 | % |

(1) Home and garden includes furniture, home decor, kitchen and dining, bedding, garden and patio, home improvement, housewares and other related products.

Sales and Marketing

We use a variety of methods to target our consumer audience, including online campaigns, such as advertising through keywords, product listing ads, display ads, search engines, affiliate marketing programs, social coupon websites, portals, banners, e-mail, direct mail and viral and social media campaigns. We also do brand advertising through television, radio, and print ads.

Customer Service

We are committed to providing superior customer service. We staff our customer service department with dedicated in-house and outsourced professionals who respond to phone, instant online chat and e-mail inquiries on products, ordering, shipping status, returns and other areas of customer inquiry.

Technology

We use our internally developed Websites and a combination of proprietary technologies and commercially available licensed technologies and solutions to support our operations. We use the services of multiple telecommunications companies to obtain connectivity to the Internet. Currently, our primary computer infrastructure is located in a co-location facility in Salt Lake City. We also have a second data center near our corporate headquarters which we use primarily for backups, redundancy, development, testing, and our corporate systems infrastructure.

Competition

Internet retail is intensely competitive and has relatively low barriers to entry. We believe that competition in this industry is based predominantly on:

- price;
- product quality and selection;
- shopping convenience;
- website organization and load speed;
- order processing and fulfillment;
- order delivery time;
- customer service; and
- brand recognition.

We compete with other online retailers, traditional retailers and liquidation "brokers," some of which may specifically adopt our methods and target our customers. We currently or potentially compete with a variety of companies that can be divided into several broad categories:

- liquidation e-tailers;
- online discount general retailers;
- private sale sites;
- online specialty retailers; and
- traditional general merchandise and specialty retailers and liquidators, some of which also have an online presence.

Many of our current and potential competitors have greater brand recognition, longer operating histories, larger customer bases and significantly greater financial, marketing and other resources than we do. Further, any of them may enter into strategic or commercial relationships with larger, more established and well-financed companies, including exclusive distribution arrangements with our vendors or service suppliers that could deny us access to key products or needed services, or acquisitions of our suppliers or service providers, having the same effect. Many of them do or could devote greater resources to

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marketing and promotional campaigns and devote substantially more resources to their website and systems development than we do. Many have supply chain operations that decrease product shipping times to their customers, or have options for in-store product pick-up options or allow in-store returns and offer other delivery and returns options that we do not have. New technologies and the continued enhancement of existing technologies and developments in related areas, such as same-day product deliveries, also may increase competitive pressures on us. Our competitors include Amazon.com, Inc. We cannot ensure that we will be able to compete successfully against current or future competitors or address increased competitive pressures (see Item 1A—"Risk Factors").

Seasonality

Our business is affected by seasonality because of the holiday retail season, which historically has resulted in higher sales volume during our fourth quarter, which ends December 31. We recognized 30.5%, 31.1% and 29.8% of our annual revenue during the fourth quarter of 2013, 2012, and 2011, respectively.

Financial Information about Business Segments and Geographic Areas

See Item 15 of Part IV, "Financial Statements"—Note 22—"Business Segments" for information regarding our business segments and geographical areas.

Intellectual Property and Trade Secrets

We regard our domain names and similar intellectual property as critical to our success. We rely on a combination of laws and contractual restrictions with our employees, customers, suppliers, affiliates and others to establish and protect our proprietary rights, including the law pertaining to trade secrets. Despite these precautions, it may be possible for a third party to copy or otherwise obtain and use our intellectual property or trade secrets without authorization. In addition, we cannot ensure that others will not independently develop similar intellectual property. Although we have registered and are pursuing the registration of our key trademarks in the United States and some other countries, some of our trade names may not be eligible to receive registered trademark protection. In addition, effective trademark protection may not be available or we may not seek protection in every country in which we market or sell our products and services, including in the United States. Additionally our efforts to protect our trade secrets may not succeed.

Third parties have in the past recruited and may in the future recruit our employees who have had access to our proprietary technologies, processes and operations. These recruiting efforts expose us to the risk that such employees and those hiring them will misappropriate and exploit our intellectual property and trade secrets.

Legal and Regulatory Matters

From time to time, we receive claims and become subject to regulatory investigations or actions, consumer protection, employment, intellectual property and other commercial litigation related to the conduct of our business. We also prosecute lawsuits to enforce our legal rights. Such litigation is costly and time consuming and can divert our management and key personnel from our business operations. The uncertainty of litigation increases these risks. In connection with such litigation, we may be subject to significant damages, associated costs, or equitable remedies relating to the operation of our business and the sale of products on our Website. Any such litigation may materially harm our business, prospects, results of operations, financial condition or cash flows.

These and other types of claims could result in increased costs of doing business through legal expenses, adverse judgments or settlements or require us to change our business practices in expensive and significant ways. In addition, litigation could result in interpretations of the law that require us to change our business practices or otherwise increase our costs.

Additional litigation may be necessary in the future to enforce our intellectual property rights, to protect our trade secrets or to determine the validity and scope of the proprietary rights of others. Any litigation, regardless of outcome or merit, could result in substantial costs and diversion of management and technical resources, any of which could materially harm our business (see Item 1A—"Risk Factors").

For further information, see the information set forth under Item 15 of Part IV, "Financial Statements—Note 13—Commitments and Contingencies, subheading Legal Proceedings," contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K.

Government Regulation

Our services are subject to federal and state consumer protection laws including laws protecting the privacy of consumer information and regulations prohibiting unfair and deceptive trade practices. In particular, under federal and state financial privacy laws and regulations, we must provide notice to consumers of our policies on sharing non-public information

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with third parties, advance notice of any changes to our policies and, with limited exceptions, we must give consumers the right to prevent sharing of their non-public personal information with unaffiliated third parties. Further, the growth and demand for online commerce could result in more stringent consumer protection laws that impose additional compliance burdens on online companies. These consumer protection laws could result in substantial compliance costs.

New disclosure and reporting requirements, established under existing or new state or federal laws, such as rules regarding requirements to identify the origin and existence of certain "conflict minerals" or regarding the disclosure of abusive labor practices in portions of our supply chain, could increase the cost of doing business, adversely affecting our results of operations.

In many states, there is currently great uncertainty whether or how existing laws governing issues such as property ownership, sales and other taxes, libel and personal privacy apply to the Internet and commercial online services. In addition, new state tax regulations in states where we do not now collect state and local taxes may subject us to the obligation to collect and remit state and local taxes, or subject us to additional state and local sales and income taxes, or to requirements intended to assist states with their tax collection efforts. New legislation or regulation, the application of laws and regulations from jurisdictions whose laws do not currently apply to our business or the application of existing laws and regulations to the Internet and commercial online services could result in significant additional taxes on our business. These taxes or tax collection obligations could have an adverse effect on our cash flows and results of operations. Further, there is a possibility that we may be subject to significant fines or other payments for any past failures to comply with these requirements.

## Employees

At December 31, 2013, we had approximately 1,500 full-time employees. We seasonally augment our workforce with temporary employees during our fourth quarter to handle increased workload in both our warehouse and customer service operations. We have never had a work stoppage, and none of our employees are represented by a labor union. We consider our employee relationships to be good. Competition for qualified personnel in our industry has historically been intense, particularly for software engineers and other technical staff.

## Executive Officers of the Registrant

The following persons were executive officers of Overstock as of February 19, 2014:

| Executive Officers | Age | Position |
|---|---|---|
| Patrick M. Byrne | 51 | Chief Executive Officer and Chairman of the Board of Directors |
| Jonathan E. Johnson III | 47 | Executive Vice Chairman of the Board of Directors and Corporate Secretary |
| Stormy D. Simon | 45 | Co-President and Director |
| David J. Nielsen | 44 | Co-President |
| Mark J. Griffin | 58 | Senior Vice President and General Counsel |
| Robert P. Hughes | 54 | Senior Vice President, Finance and Risk Management |
| Sam "Saum" Noursalehi | 34 | Senior Vice President, Marketing |
| Brian L. Popelka | 47 | Senior Vice President, Customer and Product Care |
| Bhargav J. Shah | 38 | Senior Vice President, Technology |
| Stephen P. Tryon (1) | 52 | Senior Vice President, People Care |

(1) Mr. Tryon has given notice of his resignation effective February 28, 2014.

Dr. Patrick M. Byrne has served as our Chief Executive Officer (principal executive officer) and as a Director since 1999, as Chairman of the board of directors from 2001 through 2005, and since July 2006. From 1997 to 1999, Dr. Byrne served as President and Chief Executive Officer of Fechheimer Brothers, Inc., a manufacturer and distributor of uniforms. From 1995 until its sale in September 1999, Dr. Byrne was Chairman, President and Chief Executive Officer of Centricut, LLC, a manufacturer and distributor of industrial torch parts. From 1994 to the present, Dr. Byrne has served as a Manager of the Haverford Group, an investment company and an affiliate of Overstock. Dr. Byrne has a Bachelor of Arts Degree in Chinese studies from Dartmouth College, a Master's Degree from Cambridge University as a Marshall Scholar, and a Ph.D. in philosophy from Stanford University.

Mr. Jonathan E. Johnson III joined Overstock in 2002 and has served as Executive Vice Chairman of the Board since May 2013. He also serves as Corporate Secretary. Mr. Johnson has previously served as Acting Chief Executive

Officer, President, General Counsel and as our Vice President, Strategic Projects and Legal, and Senior Vice President, Corporate Affairs and Legal. From 1999 to 2002, Mr. Johnson held various positions with TenFold Corporation, a software company, including General Counsel, Executive Vice President and Chief Financial Officer. Prior to this Mr. Johnson practiced law in

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Los Angeles, and served as a judicial clerk at the Utah Supreme Court and the Utah Court of Appeals. Mr. Johnson has served on the Board of Governors of the Salt Lake Chamber of Commerce for many years. He also serves on the Board of Trustees of the Utah Technology Council and is a member of the Council of Better Business Bureaus National Partner Leadership Circle. Mr. Johnson holds a Bachelor's Degree in Japanese from Brigham Young University, studied for a year at Osaka University of Foreign Studies in Japan, and holds a Juris Doctor from the J. Reuben Clark Law School at Brigham Young University.

Ms. Stormy D. Simon has served as a Co-President since February 2013. Ms. Simon previously served as the Senior Vice President, Customer and Partner Care. Ms. Simon has also served as a member of our board of directors since 2011. Ms. Simon previously served as our Senior Vice President, Marketing; Vice President, BMMG; Travel and Off-Line Advertising; Chief of Staff and as our Director of B2B. Prior to joining Overstock in 2001, Ms. Simon worked in the media and travel industries.

Mr. David J. Nielsen has served as a Co-President since February 2013. Mr. Nielsen previously served as the Senior Vice President, Merchandising & Supply Chain. Prior to joining Overstock in 2009, Mr. Nielsen was with Payless ShoeSource, Inc., a shoe retailer from 2005 through 2009. At Payless he held a variety of positions, most recently serving as the Vice President of Merchandise Distribution. Additionally, Mr. Nielsen worked at Old Town Imports, LLC, a retail company, where he served as President and CEO. Mr. Nielsen holds a Bachelor's Degree in Business Management with an emphasis in Marketing from Brigham Young University.

Mr. Mark J. Griffin was promoted to Senior Vice President, General Counsel in February 2014. He also serves as Assistant Corporate Secretary. He began his service as a Vice President and General Counsel when he joined Overstock in 2006. Before joining Overstock, Mr. Griffin was a partner at the Salt Lake City law firm, Woodbury & Kesler. Before private practice, Mr. Griffin was Director of the Utah Securities Division, Deputy Secretary of State for the State of Nevada, and has also served as an Assistant Utah Attorney General handling securities, antitrust cases and white collar fraud prosecutions. For many years, Mr. Griffin served in the leadership of the North American Securities Administrators Association, with offices in Washington, D.C., completing his work with NASAA as its 1996 President. Mr. Griffin is an active member of the Utah State Bar and holds Juris Doctor and Bachelor of Arts degrees from Brigham Young University.

Mr. Robert P. Hughes (principal financial and accounting officer) has served as our Senior Vice President, Finance and Risk Management since February 2013. He previously served as Vice President and Controller. Prior to joining the Company in 2008, Mr. Hughes served as Chief Financial Officer and Chief of Staff of TenFold Corporation. Prior to working for TenFold, Mr. Hughes held a number of senior accounting and internal audit positions with Oracle Corporation. He holds a B.S. in Business Administration with an emphasis in accounting and finance from the University of California Berkeley, Haas School of Business, and is a certified public accountant (CA - inactive status).

Mr. Saum Noursalehi has served as our Senior Vice President, Marketing since February 2013. Mr. Noursalehi previously served as Vice President of OLabs, an innovative research and development group within the Company, and previously as Vice President of new product development. Prior to his appointment as a Vice President, Mr. Noursalehi was the Company’s senior director of website, mobile and search engine optimization. Mr. Noursalehi has been with Overstock since 2005. Prior to joining Overstock Mr. Noursalehi worked as a software developer. Mr. Noursalehi holds a bachelor's degree in Computer Science from the University of Utah.

Mr. Brian L. Popelka has served as our Senior Vice President, Customer and Product Care since June 2013. Mr. Popelka previously served as Vice President of Customer Care. Since joining Overstock in 2002, Mr. Popelka has held several positions including the director of Books, Media, Movies and Games Department, and was the manager of the Business-to-Business Department. Mr. Popelka holds a bachelor's degree in Journalism, Broadcasting, Film and History from the University of Nebraska in Lincoln.

Mr. Bhargav J. Shah serves as our Senior Vice President, Technology. Prior to joining Overstock in 2012, Mr. Shah served as a director in KPMG LLP's IT advisory group since 2009. Prior to that, Mr. Shah held various positions with Bearing Point (formerly KPMG Consulting) including consulting senior manager. Mr. Shah holds a Chemical Engineering Degree from K.E.S Engineering College in Mumbai, India and a Master's of Business Administration Degree in Finance from Bentley University.

Mr. Stephen P. Tryon serves as Senior Vice President, People Care. Mr. Tryon previously served as a Vice President in several departments including logistics, international, and human resources. Prior to joining Overstock in 2004, Mr. Tryon was the Legislative Assistant to the Chief of Staff of the United States Army. During his 21 years with the Army, his assignments included director of plans for the 10th Mountain Division, Congressional Fellow for United States Senator Max Cleland, Assistant Professor of Philosophy at the United States Military Academy, and commander of a company of paratroopers. Mr. Tryon received a Bachelor's of Science Degree in Applied Sciences from the U.S. Military Academy and a Master's Degree of Arts in Philosophy from Stanford University.

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Available Information
Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 are available free of charge through our the Investor Relations sections of our main website www.overstock.com as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission. Our Internet Website and the information contained therein or connected thereto are not a part of or incorporated into this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

Please consider the following risk factors carefully. If any of the following risks were to occur, it could have a material adverse effect on our business, prospects, financial condition and results of operations, and the market price of our securities could decrease significantly. Statements below to the effect that an event could harm our business (or similar statements) mean that the event could have a material adverse effect on our business, prospects, financial condition and results of operations. These are not the only risks we face.

We are an e-commerce business and we depend on the continued use of the Internet and the adequacy of the Internet infrastructure.

Our business depends upon the widespread use of the Internet and e-commerce. Factors which could reduce the widespread use of the Internet for e-commerce include:

- actual or perceived lack of security of information or privacy protection;
- cyber-attacks or other disruptions or damage to the Internet or to users’ computers;
- significant increases in the costs of transportation of goods; and
- taxation and governmental regulation.

We depend on our relationships with independent fulfillment partners for a large portion of the products that we offer for sale on our Website. If we fail to maintain these relationships, our business will suffer.

At December 31, 2013, we had relationships with approximately 2,400 independent fulfillment partners whose products we offer for sale on our Website. Sales through our fulfillment partners accounted for 88% of our net revenues for the year ended December 31, 2013, respectively. If we do not maintain our existing relationships or build new relationships with fulfillment partners on acceptable commercial terms, we may not be able to maintain a broad selection of merchandise, and our business and prospects would suffer severely. Our agreements with fulfillment partners are generally terminable at will by either party upon short notice.

We depend on our fulfillment partners to perform certain services regarding the products that we offer.

In general, we agree to offer the fulfillment partners’ products on our Website and these fulfillment partners agree to conduct a number of other traditional retail operations such as maintaining inventory, preparing merchandise for shipment to our customers and delivering purchased merchandise on a timely basis. We may be unable to ensure that these third parties will continue to perform these services to our satisfaction or on commercially reasonable terms. In addition, because we do not take possession of these fulfillment parties’ products (other than on the return of such products), we are generally unable to fulfill these traditional retail operations ourselves. If our customers become dissatisfied with the services provided by these third parties, our business and reputation and the Overstock.com brand could suffer.

Risks associated with the suppliers from whom our products are sourced and the safety of those products could adversely affect our financial performance.

Global sourcing of many of the products we sell is an important aspect of our business. We depend on our ability to access products from qualified suppliers in a timely and efficient manner. Political and economic instability, the financial stability of suppliers, suppliers’ ability to meet our standards, labor problems experienced by our suppliers, the availability of raw materials, merchandise quality issues, currency exchange rates, transport availability and cost, transport security, inflation, and other factors relating to the suppliers and the countries in which they are located are beyond our control. We also largely rely on our supplier's representations of product content and quality. Concerns regarding product content or quality, or the safety of products that we source from our suppliers could cause shoppers to avoid purchasing certain products from us, or to seek alternative sources of supply for all of their needs, even if the basis for the concern is outside of our control. Any lost confidence on the part of our customers would be difficult and costly to reestablish. As such, any issue regarding the safety of

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any items we sell, regardless of the cause, could adversely affect our financial performance. Further, we sell products manufactured by third parties, some of which may be defective. If any product that we sell were to cause physical injury or injury to property, the injured party or parties might bring claims against us as the manufacturer and/or retailer of the product. Our insurance coverage may not be adequate to cover claims that could be asserted. Even unsuccessful claims could result in the expenditure of funds and management time and could have a negative impact on our business.

Manufacturers may refuse to sell to us or through our site.

We rely upon our fulfillment partners and other suppliers for the product offerings sold on our website and other products and services we use to run our business. Our ability to retain or attract new fulfillment partners and other suppliers may depend in part on our financial performance. Poor financial performance could result in suppliers choosing to limit or suspend doing business with us or require us to prepay for our purchases. Further, some manufacturers are unwilling to offer products for sale on the Internet or on sites like ours. Our inability to source and offer popular products could be a significant problem for us.

Our business depends on our Website, network infrastructure and transaction-processing systems.

As an e-commerce company, we are completely dependent on our infrastructure. Any system interruption that results in the unavailability of our Website or reduced performance of our transaction systems could substantially reduce our ability to conduct our business. We use internally and externally developed systems for our Website and our transaction processing systems, including personalization databases used for internal analytics, recommendations and order verifications. We have experienced periodic systems interruptions due to server failure and power failure in the past, which we expect will continue to occur from time to time. We have also experienced and may continue to experience temporary capacity constraints due to sharply increased traffic during sales or other promotions and during the holiday shopping season. Capacity constraints can cause system disruptions, slower response times, delayed page presentation, degradation in levels of customer service and other problems. In the past we have also experienced difficulties with our infrastructure upgrades. Any future difficulties with our transaction processing systems or difficulties upgrading, expanding or integrating aspects of our systems may cause system disruptions, slower response times, and degradation in levels of customer service, additional expense, impaired quality and speed of order fulfillment or other problems.

If the facility where substantially all of our computer and communications hardware is located fails, our business, prospects, financial condition and results of operations could be harmed.

If the facility where substantially all of our computer and communications hardware is located fails, or if we suffer an interruption or degradation of services at the facility for any reason, our business could be harmed. Our success, and in particular, our ability to successfully receive and fulfill orders and provide high-quality customer service, largely depends on the efficient and uninterrupted operation of our computer and communications systems. Substantially all of our computer and communications hardware is located at a single co-location facility in Salt Lake City, Utah, with a partially redundant back-up system located less than six miles from the co-location facility. In the event of an earthquake or major local disaster, or any other cause of interruption of service, both our primary and back-up sites could be adversely affected. Although we have designed our back-up system in an effort to minimize service interruptions in the event of a failure of our main facility, our systems and operations are vulnerable to damage or interruption from fire, flood, power loss, telecommunications failure, terrorist attacks, cyber-attacks, acts of war, break-ins, earthquake and similar events. In the event of a failure of our primary facility, the failover to our back-up facility would take at least several hours, during which time our Website would be completely shut down. Our back-up facility is designed to support sales at a level slightly above our average daily sales, but is not adequate to support sales at a high level. The back-up facility may not process effectively during time of higher traffic to our

Website and may process transactions more slowly and may not support all of the functionality of our primary site. These limitations could have an adverse effect on our conversion rate and sales. Our disaster recovery plan may be inadequate, and we do not carry business interruption insurance sufficient to compensate us for the losses that could occur. Despite our implementation of network security measures, our servers are vulnerable to computer viruses, physical or electronic break-ins and similar disruptions, the occurrence of any of which could lead to interruptions, delays, loss of critical data or the inability to accept and fulfill customer orders. The occurrence of any of the foregoing risks could harm our business.

We depend upon third party delivery services to deliver products to our customers on a timely and consistent basis. Deterioration in our relationship with any one of these third parties could decrease our ability to track shipments, cause shipment delays, and increase our shipping costs and the number of damaged products.

We rely upon third party delivery providers for the shipment of products to customers. We cannot be sure that these relationships will continue on terms we find acceptable, or at all. Increases in shipping costs or delivery times, particularly

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during the holiday season, could harm our business. If our relationships with these third parties are terminated or impaired or if these third parties are unable to deliver products for us, whether as a result of labor shortage, slow down or stoppage, deteriorating financial or business condition, terrorist attacks, cyber-attacks, Internet or other infrastructure or communications impairment, natural disasters, or for any other reason, we would be required to use alternative carriers for the shipment of products to our customers. In addition, conditions such as adverse weather or natural disasters can prevent any carrier from performing its delivery services, which can have an adverse effect on our customers' satisfaction with us. In any of these circumstances, we may be unable to engage alternative carriers on a timely basis, upon terms we find acceptable, or at all. Changing carriers, or absence of carrier availability, could have a material adverse effect on our business.

We depend upon our credit card processors and payment card associations.

Our customers primarily use credit cards to buy from us. We are dependent upon our credit card processors to process the sales transactions and remit the proceeds to us. The credit card processors have the right to withhold funds otherwise payable to us to establish or increase a reserve based on their assessment of the inherent risks of credit card processing and their assessment of the risks of processing our customers' credit cards at any time, and have done so from time to time in the past. We are also subject to payment card associations' operating rules, certification requirements and rules governing electronic funds transfers, which could change or be reinterpreted to make it difficult or impossible for us to comply. If we fail to comply with these rules or requirements, we may be subject to fines and higher transaction fees and lose our ability to accept credit and debit card payments from our customers, process electronic funds transfers, or facilitate other types of online payments. In addition, events affecting our credit card processors, including cyber-attacks, Internet or other infrastructure or communications impairment or other events that could interrupt the normal operation of the credit card processors, could have a material adverse effect on our business.

We rely upon paid and natural search engines like Google, Bing, and Yahoo! to rank our product offerings. Our financial results may suffer if search engines change their ranking algorithms and our product offerings are ranked lower, and we may at times be subject to ranking penalties if search engines believe we are not in compliance with their guidelines.

We rely on paid and natural search engines to attract consumer interest in our product offerings. Potential and existing customers use search engines provided by search engine companies, including, but not limited to, Google, Bing, and Yahoo!, which use algorithms and other devices to provide users a natural ranked listing of relevant Internet sites matching a user's search criteria and specifications. Generally, Internet sites ranked higher in the paid and natural search results attract the largest visitor share among similar Internet sites, and often benefit from increased sales. Natural search engine algorithms use information available throughout the Internet, including information available on our site. If search engine companies change their natural search engine algorithms, and our ranking in natural searches is adversely affected by those changes, our financial results may suffer from reduced revenues and from increased marketing expenses from seeking to replace such lost revenues from other sources.

Rules and guidelines of these natural search engine companies govern our participation on their sites and how we share relevant Internet information that may be considered or incorporated into the algorithms used by these sites. If these rules and guidelines change, or if we fail to present, or improperly present, our site information for use by natural search engine companies, or if any of these natural search engine companies determine that we have violated their rules or guidelines, as Google did in February 2011 through April 2011, or if others improperly present our site information to these search engine companies, we may fail to achieve an optimum ranking in natural search engine listing results, or we may be penalized in a way that could harm our business.

In addition, large marketplace websites and sites which aggregate marketplace sellers with a large product selection are becoming increasingly popular, and we may not be able to place our products on these sites to take advantage of their internal search platforms. Our inability to place products on or access these sites may have a material adverse effect on our business.

We are subject to cyber security risks and risks of data loss or other security breaches, and may incur increasing costs in an effort to minimize those risks and to respond to cyber incidents.

Our business is entirely dependent on the secure operation of our website and systems as well as the operation of the Internet generally. Our business involves the storage and transmission of users' proprietary information, and security breaches could expose us to a risk of loss or misuse of this information, litigation, and potential liability. A number of large Internet companies have suffered security breaches, some of which have involved intentional attacks. From time to time we and many other Internet businesses also experience denial of service attacks wherein attackers attempt to block customers' access to our Website. If we are unable to avert a denial of service attack for any significant period, we could sustain substantial revenue loss from lost sales and customer dissatisfaction. We may not have the resources or technical sophistication to anticipate or prevent

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rapidly evolving types of cyber-attacks. Cyber-attacks may target us, our customers, our suppliers, banks, credit card processors, delivery services, e-commerce in general or the communication infrastructure on which we depend. If an actual or perceived attack or breach of our security occurs, customer and/or supplier perception of the effectiveness of our security measures could be harmed and we could lose customers, suppliers or both. Actual or anticipated attacks and risks may cause us to incur increasing costs, including costs to deploy additional personnel and protection technologies, train employees, and engage third party experts and consultants.

A person who is able to circumvent our security measures might be able to misappropriate our or our users' proprietary information, cause interruption in our operations, damage our computers or those of our users, or otherwise damage our reputation and business. Any compromise of our security could result in a violation of applicable privacy and other laws, significant legal and financial exposure, damage to our reputation, and a loss of confidence in our security measures, which could harm our business.

Most of our customers use credit cards to pay for their purchases. We rely on encryption and authentication technology licensed from third parties to provide the security and authentication to effectively secure transmission of confidential information, including customer payment card numbers. We cannot provide assurance that our technology can prevent breaches of the systems that we use to protect customer data. Data breaches can also occur as a result of non-technical issues.

Under payment card rules and our contracts with our card processors, if there is a breach of payment card information that we store, we could be liable to the payment card issuing banks for their cost of issuing new cards and related expenses. In addition, if we fail to follow payment card industry security standards, even if there is no compromise of customer information, we could incur significant fines or lose our ability to give customers the option of using payment cards to fund their payments or pay their fees. If we were unable to accept payment cards, our business would be seriously damaged.

Our servers and the servers of our suppliers may also be vulnerable to computer viruses, physical or electronic break-ins, and similar disruptions, including denial-of-service attacks. We may need to expend significant resources to protect against attacks or security breaches or to address problems caused by attacks or breaches. Any attack or breach incident involving us or persons with whom we have commercial relationships, that results in the unauthorized release of our users' personal information, could damage our reputation and expose us to a risk of loss or litigation and possible liability.

Third parties have demonstrated that they can breach the security of customer transaction data of large sophisticated Internet retailers, government organizations and others. Any breach, whether it affects us directly or not, could cause our customers to lose confidence in the security of our site or the use of the Internet and e-commerce in general. If third parties are able to penetrate our network security or otherwise misappropriate our customers' personal information or credit card information, or if we give third parties improper access to our customers' personal information or credit card information, we could be subject to liability. This liability could include claims for unauthorized purchases with credit card information, impersonation or other similar fraud claims or damages for alleged violations of state or federal laws governing security protocols for the safekeeping of customers' personal or credit card information. This liability could also include claims for other misuses of personal information, including unauthorized marketing purposes. These claims could result in litigation. Liability for misappropriation of this information could adversely affect our business.

Cyber-attacks affecting our suppliers, delivery services or other service providers could adversely affect us.

We depend on our fulfillment partners to provide a large portion of the product selection we offer and on vendors for the products we purchase and offer in our direct business. We also depend on delivery services to deliver products, and on other service providers, including suppliers of services which support Website operations, including payment systems, customer service support, and communications. Cyber-attacks affecting our delivery services or any of our most significant suppliers or affecting a significant number of our suppliers of products or services could have a material adverse effect on our business. The adverse effects could include our inability to source product or fulfill orders, our customers' or suppliers' inability to contact us or access our Website or call centers or chat lines, or the compromise of our customers' confidential data.

Credit card fraud and our response to it could adversely affect our business.

We routinely receive orders placed with fraudulent credit card data. We do not carry insurance against the risk of credit card fraud, so our failure to adequately control fraudulent credit card transactions could reduce our net revenues and our gross profit. We may suffer losses as a result of orders placed with fraudulent credit card data even if the associated financial institution approved payment of the orders. Under current credit card practices, we may be liable for fraudulent credit card transactions because we do not obtain a cardholder's signature. If we are unable to detect or control credit card fraud, our liability for these transactions could harm our business, prospects, financial condition and results of operation. Further, to the extent that our efforts to prevent fraudulent orders result in our inadvertent refusal to fill legitimate orders, we would lose the benefit of legitimate potential sales and risk the alienation of legitimate customers.

Natural disasters and geo-political events could adversely affect our business.

Natural disasters, including hurricanes, cyclones, typhoons, tropical storms, floods, earthquakes and tsunamis, weather conditions, including winter storms, droughts and tornados, whether as a result of climate change or otherwise, and geo-political events, including civil unrest or terrorist attacks, that affect us or our delivery services, suppliers, credit card processors or other service providers could adversely affect our business.

Our insurance coverage and indemnity rights may not adequately protect us against loss.

Although we maintain certain types of insurance, we cannot be certain that the types, coverage, or the amounts of coverage we maintain will be adequate for losses actually incurred, or that the insurance will continue to be available to us on economically reasonable terms. Similarly, although we are indemnified by most of our suppliers and vendors for product liability for products they supply us, and we have indemnification agreements with software and hardware suppliers for losses we might incur as a result of the use of the technology products they supply, we are not indemnified by all our suppliers, nor can we be certain that our indemnification rights are enforceable or adequate to cover actual losses we may incur as a result of the sale or use of products our indemnitors provide to us. Actual losses for which we are not insured or indemnified, or which exceed our insurance coverage or the capacity of our indemnitors, could harm our business, prospects, financial condition and results of operations.

We may not be able to compete successfully against existing or future competitors.

The online retail market is rapidly evolving and intensely competitive. Barriers to entry are minimal, and current and new competitors can launch new websites at a relatively low cost. We currently compete with numerous competitors, including:

- liquidation e-tailers such as SmartBargains;
- online retailers with discount departments such as Amazon.com, Inc., eBay, Inc. and Rakuten.com, Inc. (formerly Buy.com, Inc.);
- private sale sites such as Rue La La and Gilt Groupe;
- online specialty retailers such as Bluefly, Inc., Blue Nile, Inc. and Zappos.com.; and
- traditional general merchandise and specialty retailers and liquidators such as Ross Stores, Inc., T.J. Maxx, Wal-Mart Stores, Inc., Costco Wholesale Corporation, J.C. Penny Company, Inc., Sears Holding Corporation, Target Corporation, Best Buy Co., Inc., Home Depot, Inc. and Barnes and Noble, Inc., all of which also have an online presence.

We expect the online retail market to become even more competitive as traditional liquidators and online retailers continue to develop and improve services that compete with our services. In addition, more traditional manufacturers and retailers may continue to add or improve their e-commerce offerings. Traditional or online retailers may create proprietary, store-based distribution and returns channels. Competitive pressures, including same-day delivery capabilities, from any of our competitors, many of whom have longer operating histories, larger customer bases, greater brand recognition and significantly greater financial, marketing and other resources than we do, could harm our business.

Further, as a strategic response to changes in the competitive environment, we may from time to time make competitive pricing, service, marketing or other decisions that could harm our business. For example, to the extent that we enter new lines of businesses such as third party logistics, insurance sales or discount brick and mortar retail, we would be competing with large established businesses such as APL Logistics and Ross Stores, Inc. In the past we have entered the online auctions, car listing and real estate listing businesses in which we compete or competed with large established businesses including eBay, Inc., AutoTrader.com, Inc. and Realtor.com. We no longer offer online auctions services or real estate listing services.

If one or more states successfully assert that we should collect sales or other taxes on the sale of our merchandise or the merchandise of third parties that we offer for sale on our Website, or that we should pay commercial activity taxes, our business could be harmed.

We do not currently collect sales or other similar taxes for physical shipments of goods into states where we have no duty to do so under federal court decisions construing applicable constitutional law. One or more local, state or foreign jurisdictions may seek to impose sales tax collection obligations on us because we are engaged in online commerce, even though to do so would be contrary to existing court decisions. The future location of our fulfillment or customer service centers networks, or any other operation, service contracts with third parties located in another state, channel distribution arrangements or other agreements with third party sellers, or any act that may be deemed by a state to have established a physical presence in states where we are not now present, may result in additional sales and other tax obligations. New York and other states have passed so-called “Internet affiliate advertising” statutes, which require a remote seller, with no physical presence in the state, to collect state sales tax if the remote seller contracted for advertising services with an Internet advertiser in that state. In New York and states passing similar laws, we have terminated our use of locally based Internet advertisers. Several other states currently have similar tax proposals under consideration. In a case that went up on appeal, an Illinois state court struck down on constitutional grounds a similar Illinois statute, and the Illinois Supreme Court has upheld that decision. If such laws survive constitutional challenge, we may elect to discontinue in those states valuable marketing through the use of affiliates based in those states, or may begin to collect taxes in those states. In either event, our business could be harmed. Further, our business could be harmed if one or more states or any foreign country successfully asserts that we should collect sales or other taxes on the sale of our merchandise.

The United States Senate has passed the Marketplace Fairness Act of 2013 (“MFA”) which if also passed by the United States House of Representatives and not vetoed, would permit states which comply with the requirements of the MFA to force remote sellers like us to collect taxes in states where we have no physical presence. If the MFA becomes law our business could be harmed.

Other states have enacted forms of economic taxes to which we may be subject. In September 2009, we received a letter of determination from the Ohio Department of Taxation noting the Department’s determination that we are required to register for remitting of the Commercial Activity Tax, and that we owed $612,784 in taxes, interest, and penalties as of June 30, 2009 since which time the Ohio Department of Taxation issued additional estimated assessments totaling $170,322 as of September 30, 2013. After contesting the estimates, we later reached an agreement which required our payment of a diminished amount of the estimated assessments, a reduction of interest and a waiver of penalties. Other businesses have continued in lawsuits contesting the constitutionality of the tax and, if successful, we will reassess our position respecting the Ohio tax. If other states enact and commence enforcement of similar commercial activity tax laws, these could harm our business.

Several other states have enacted laws requiring remote vendors to notify resident purchasers in those states of their obligation to pay a use tax on their purchases and, in some instances, to report untaxed purchases to the state tax authorities. In Colorado, a federal court on constitutional grounds granted a preliminary injunction against the state’s enforcement of its tax-notice and reporting law. Colorado appealed, and the injunction was overturned on jurisdictional grounds. The ruling is being appealed to the United States Supreme Court, and the plaintiff has also commenced an action in Colorado state court, challenging the law. The Colorado state court has issued a preliminary injunction suspending the law's enforcement on constitutional grounds. Other states have enacted similar legislation and more states may enact these laws. Such laws could harm our business by imposing unreasonable notice burdens upon us, by interposing burdensome transaction notices that negatively affect conversion, or by discouraging customer purchases by requiring detailed purchase reporting.

Economic pressure on states could harm our business.

The current economic climate has resulted in a sharp decline in state revenues, and states have projected large state budget shortfalls in the years ahead. These shortfalls require state legislatures and agencies to examine the means to increase state revenues. States may increase sales and use tax rates, create new tax laws covering previously untaxed activities, or increase existing license fees or create new fees all of which may directly or indirectly harm our business. Similarly, administrative agencies may apply more rigorous enforcement efforts or take inflexible positions respecting the laws they administer, especially if the laws permit the imposition of monetary penalties and fines which either the state or the administrative agency may use to balance their budgets. To the extent that states pass additional revenue measures, or significantly increase their enforcement efforts, these activities could directly or indirectly harm our business.

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If we do not respond to rapid technological changes, our services could become obsolete, and we could lose customers.

The Internet and the online commerce industry are changing rapidly. To remain competitive, we must continue to enhance and improve the functionality and features of our e-commerce businesses. If we fail to do so, we may lose customers. If competitors introduce new products or services using new technologies or if new industry standards and practices emerge, our Website and our proprietary technology and systems may become obsolete. Our failure to respond to technological change or to adequately maintain, upgrade and develop our computer network and the systems used to process customers' orders and payments could harm our business.

We have an evolving business model.

Our business model has evolved in the past and continues to do so. In prior years we have added additional types of services and product offerings and in some cases we have modified or discontinued those offerings. We may continue to try to offer additional types of products or services, and we cannot offer any assurance that any of them will be successful. From time to time we have also modified aspects of our business model relating to our product mix and the mix of direct/fulfillment partner sourcing of the products we offer. We may continue to modify this aspect of our business as well as other significant aspects of our business. We cannot offer any assurance that these or any other modifications will be successful or will not result in harm to the business. The additions and modifications to our business have increased the complexity of our business and placed significant strain on our management, personnel, operations, systems, technical performance, financial resources, and internal financial control and reporting functions. Future additions to or modifications of our business are likely to have similar effects. We may not be able to manage growth effectively, which could damage our reputation, limit our growth and negatively affect our operating results. Further, any new business or website we launch that is not favorably received by consumers could damage our reputation or the Overstock.com brand.

We are attempting to expand our international business, which may cause our business to become increasingly susceptible to numerous international business risks and challenges that could affect our profitability.

We sell products in international markets, and in the future we may expand into these markets more aggressively. International sales and transactions are subject to inherent risks and challenges that could adversely affect our profitability, including:

- the need to develop new supplier and manufacturer relationships;
- the need to comply with additional U.S. and foreign laws and regulations to the extent applicable, including but not limited to, restrictions on advertising practices, regulations governing online services, restrictions on importation of specified or proscribed items, importation quotas, consumer protection laws, enforcement of intellectual property rights, laws dealing with consumer and data protection, privacy, encryption, and restrictions on pricing or discounts;
- changes in international laws, regulatory requirements, taxes and tariffs; and
- geopolitical events, such as war and terrorist attacks.

To the extent we generate international sales transactions in the future, any negative impact on our international operations could negatively impact our business. To date, most of our international sales have been denominated in U.S. dollars, and we have not had significant foreign currency risk on those sales. However, in the future, gains and losses on the conversion of foreign payments into U. S. dollars may contribute to fluctuations in our results of operations and fluctuating exchange rates could cause reduced gross revenues and/or gross profit percentages from non-dollar-denominated international sales. Additionally, penalties for non-compliance with laws applicable to international business and trade, such as the U.S. Foreign Corrupt Practices Act, could negatively impact our business.

Our foreign brand domain name may cause confusion.

In July 2010, we undertook an effort to associate our brand globally with the domain address: www.O.co. We did this in part because in many foreign markets the word "Overstock" lacked a good foreign cognate. Following a period of testing for the O.co brand and domain address, we returned to the Overstock.com name as our primary brand domestically because domestic consumer acceptance did not occur as quickly as we had hoped. While we have returned domestically to the Overstock.com brand and principal domain address, there is no assurance that the use of Overstock.com or O.co will gain acceptance or have success in foreign markets.

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We may incur substantial indebtedness.

At December 31, 2013, we had no indebtedness for borrowed money, and our only credit facility was a $3 million facility for the issuance of letters of credit. However, in the future we may incur substantial indebtedness. Any such indebtedness would increase our business risks substantially, including our vulnerability to industry downturns and competitive pressures. Further, financing may not be available to us on acceptable terms, or at all.

Existing or future government regulation could harm our business.

We are subject to regulation at the federal, state and international levels, including regulation relating to privacy, security, retention, transfer and use of personal user information and telemarketing laws. Increasing regulation, along with increased governmental or private enforcement, may increase the cost of our business. Compliance with existing and new privacy and security laws may be difficult and costly and may further restrict our ability to collect demographic and personal information from users, which could harm our marketing efforts, and could require us to implement new and potentially costly processes, procedures and/or protective measures. The expansion of these and other laws, both in terms of their number and their applicability to the Internet could also harm our business. Many laws, adopted prior to the advent of the Internet, do not contemplate or address the unique issues raised thereby. Consequently, courts or regulators may apply these laws to Internet commerce in ways that may present difficult or impossible compliance challenges. Many of those laws that do reference the Internet are still being interpreted by the courts and their applicability and reach are therefore uncertain. Moreover, Internet advances and innovations may result in new questions about the applicability and reach of these laws. Additionally, laws governing the permissible contents of products may adversely affect us, and we are subject to federal and state consumer laws, including those governing advertising, product labeling, product content requirements and product safety, and mandated website disclosures about programs to eliminate abusive labor practices in our supply chain. The laws not only apply to future manufacture of consumer product, but also apply to existing inventories and may cause us to incur losses for any non-compliant items in our inventory, or which we may have sold which may subject us to regulatory or civil actions. Some of the products we sell or manufacture may, under statutory or common law, from time to time expose us to claims related to personal injury, death, environmental or property damage and may from time to time require product recalls or other actions which may not be covered, in whole or in part, by our liability insurance. These current and future laws and regulations could harm our business, prospects, financial condition and results of operation.

General economic factors may adversely affect our financial performance.

General economic conditions may adversely affect our financial performance. In the United States, changes in interest rates, changes in fuel and other energy costs, weakness in the housing market, inflation or deflation or expectations of either inflation or deflation, higher levels of unemployment, unavailability or limitations of consumer credit, higher consumer debt levels or efforts by consumers to reduce debt levels, higher tax rates and other changes in tax laws, overall economic slowdown, changes in consumer desires affecting demand for the products and services we sell and other economic factors could adversely affect consumer demand for the products and services we sell, change the mix of products we sell to a mix with a lower average gross margin and result in slower inventory turnover and greater markdowns on inventory. Higher interest rates, transportation costs, inflation, higher costs of labor, insurance and healthcare, foreign exchange rates fluctuations, higher tax rates and other changes in tax laws, changes in other laws and regulations and other economic factors in the United States can increase our cost of sales and operating, selling, general and administrative expenses, and otherwise adversely affect our operations and operating results. These factors affect not only our operations, but also the operations of suppliers from whom we purchase goods, a condition that can result in an increase in the cost to us of the goods and services we sell.

Decreases in discretionary consumer spending may have an adverse effect on us.

A substantial portion of the products and services we offer are products or services that consumers may view as discretionary items rather than necessities. As a result, our results of operations are sensitive to changes in macro-economic conditions that impact consumer spending, including discretionary spending. Difficult macro-economic conditions, particularly high levels of unemployment, also impact our customers' ability to obtain consumer credit. Other factors, including consumer confidence, employment levels, interest rates, tax rates, consumer debt levels, and fuel and energy costs could reduce consumer spending or change consumer purchasing habits. Slowdowns in the U.S. or global economy, or an uncertain economic outlook, could materially adversely affect consumer spending habits and our operating results.

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We recently reversed the valuation allowance for our deferred tax assets, and we may not be able to realize these assets in the future. Our deferred tax assets may also be subject to additional valuation allowances, which could adversely affect our operating results.

Since our inception, we established a valuation allowance for our deferred tax assets, primarily due to realized losses and uncertainty regarding our future taxable income. Determining whether a valuation allowance for deferred tax assets is appropriate requires significant judgment and an evaluation of all positive and negative evidence. At each reporting period, we assess the need for, or the sufficiency of, a valuation allowance against deferred tax assets. At December 31, 2013, based on the weight of all the positive and negative evidence, we concluded that it was more likely than not that we will realize our net deferred tax assets based upon future taxable income. Therefore we reversed the valuation allowance at December 31, 2013.

Our conclusion at December 31, 2013 that it is more likely than not that we will realize our net deferred tax assets is primarily based on our estimate of future taxable income. Our estimate of future taxable income is based on internal projections which primarily consider historical performance, but also include various internal estimates and assumptions as well as certain external data. We believe all of these inputs to be reasonable, although inherently subject to significant judgment. If actual results differ significantly from these estimates of future taxable income, a valuation allowance may need to be reestablished for some or all of our deferred tax assets. Establishing an allowance on our net deferred tax assets could have a material adverse effect on our financial condition and operating results.

We may need to implement additional finance and accounting systems, procedures and controls as we grow our business and organization and to satisfy new reporting requirements.

We are required to comply with a variety of reporting, accounting and other rules and regulations. Compliance with existing requirements is expensive. Further requirements may increase our costs and require additional management time and resources. We may need to implement additional finance and accounting systems, procedures and controls to satisfy our reporting requirements. If our internal control over financial reporting is determined to be ineffective, such failure could cause investors to lose confidence in our reported financial information, negatively affect the market price of our common stock, subject us to regulatory investigations and penalties, and adversely impact our business and financial condition.

Changes in accounting standards and subjective assumptions, estimates and judgments by management related to complex accounting matters could significantly affect our financial results.

Generally accepted accounting principles and related accounting pronouncements, implementation guidelines and interpretations with regard to a wide range of matters that are relevant to our business, including but not limited to revenue recognition, estimating valuation allowances and accrued liabilities (including allowances for returns, credit card chargebacks, doubtful accounts and obsolete and damaged inventory), internal use software and website development (acquired and developed internally), accounting for income taxes, valuation of long-lived and intangible assets and goodwill, stock-based compensation and loss contingencies, are highly complex and involve many subjective assumptions, estimates and judgments by our management. Changes in these rules or their interpretation or changes in underlying assumptions, estimates or judgments by our management could significantly change our reported or expected financial performance.

We face risks relating to our inventory.

In our direct business, we sell merchandise that we have purchased and hold in inventory. We assume the risks of inventory damage, theft and obsolescence, as well as risks of price erosion for these products. These risks are especially significant because some of the merchandise we sell is characterized by seasonal trends, fashion trends, rapid technological change, obsolescence and price erosion and because we sometimes make large purchases of particular types of inventory. Subject to our returns policies, we accept returns of products sold through our fulfillment partners and we have the risk of reselling the returned products. In the past we have recorded charges for obsolete inventory and have had to sell certain merchandise at a discount or loss. To the extent that we rely on purchased inventory, our success will depend on our ability to sell our inventory rapidly, the ability of our buying staff to purchase inventory at attractive prices relative to its resale value and our ability to manage customer returns and other costs. If we are unsuccessful in any of these areas, we may be forced to sell our inventory at a discount or loss. Further, we purchase some of our inventory from foreign suppliers and pay for inventory with U.S. dollars. If the dollar weakens with respect to foreign currencies, foreign suppliers may require us to pay higher prices for products, which could negatively affect our profit margins.

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If we do not successfully optimize and operate our warehouse and customer service operations, our business could be harmed.

We have expanded, contracted and otherwise modified our warehouse and customer service operations from time to time in the past, and expect that we will continue to do so. If we do not successfully optimize and operate our warehouse and customer service operations, it could significantly limit our ability to meet customer demand, customer shipping or return time expectations, or result in excessive costs and expenses for the size of our business. Because it is difficult to predict demand, we may not manage our facilities in an optimal way, which may result in excess or insufficient inventory or warehousing capacity. We may also fail to staff our fulfillment and customer service centers at optimal levels. Our failure to do so could negatively impact our operating results and customer experience.

Our cash, cash equivalents and short-term investments are subject to a risk of loss based upon the solvency of the financial institutions in which they are maintained.

We maintain the majority of our cash, cash equivalents and short-term investments in accounts with a small number of major financial institutions within the United States, in the form of demand deposits, money market accounts, time deposits, U.S. Treasury Bills and other short-term investments. Our deposits in these institutions generally exceed the amounts of insurance provided, and some deposits may not be covered by insurance at all. If any of these institutions were to become insolvent, we could lose some, or all, of such deposits, which would have a material adverse effect on our financial condition.

Our decision to accept bitcoins as a form of payment for purchases on our website may subject us to exchange risk and additional tax and regulatory requirements.

In January 2014, we began accepting bitcoins as a form of payment for purchases on our website. Bitcoin is a digital currency that uses cryptography to control the creation and transfer of the currency between individual parties. Bitcoin is not considered legal tender or backed by any government. Since inception in 2009, bitcoins have experienced price volatility, technological glitches and various law enforcement and regulatory interventions.

Since we began accepting bitcoins as a form of payment, less than 1% of customer purchases have been made using the currency. At present we do not accept bitcoin payments directly, but use a third party vendor to accept bitcoin payments on our behalf. That third party vendor then immediately converts the bitcoin payments into U.S. dollars so that we receive payment for the product sold at the sales price in U.S. dollars. We do not hold any amount of bitcoins as a result of these transactions and are not subject to exchange risk. An insolvency of our third party vendor, however, may result in our holding bitcoins which could subject us to exchange risk.

In the future, we expect to transact in bitcoins directly and intend to hold bitcoins. This will subject us to exchange risk which may have an adverse effect on our results. There is also uncertainty regarding the current and future accounting treatment and tax, legal, and regulatory requirements relating to bitcoin or transactions utilizing bitcoin. Such accounting, legal, regulatory, and tax developments or other requirements may adversely affect us.

We may be adversely affected by fluctuations in precious metal prices.

At December 31, 2013 our investment in precious metals was $9.7 million. Our financial results may be adversely affected by declines in the price of precious metals. During the year ending December 31, 2013 our loss on our investment in precious metals was $1.5 million. The prices of precious metals may fluctuate widely in the future and are affected by numerous factors beyond our control such as interest rates, exchange rates, inflation or deflation, fluctuation in the value of the United States dollar and foreign currencies, global and regional supply and demand, and the political and economic conditions of mineral producing countries throughout the world. Our investment consists of actual precious metals, rather than financial instruments. We store our precious metals off-site in a third party facility. Consequently, we are subject to the risks of physical storage with a third party that we do not control.

We have a history of significant losses. If we do not maintain profitability, our financial condition and our stock price could suffer.

We have a history of losses, and we may incur operating and net losses in the foreseeable future. At December 31, 2013, our accumulated deficit was $158.6 million. We need to generate significant revenues to maintain profitability, and we may not be able to do so. Although we had net income of $88.5 million for the year ended December 31, 2013 and $14.7 million in 2012, we incurred a net loss of $19.4 million in 2011. We may be unable to maintain profitability in the future. If our revenues grow more slowly than we anticipate or decline, or if our expenses exceed our expectations, our financial

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results would be harmed and our business, prospects, financial condition and results of operations could fall below the expectations of public market analysts and investors.

If we fail to accurately forecast our expenses and revenues, our business, prospects, financial condition and results of operations may suffer and the price of our securities may decline.

The rapidly evolving nature of our industry and the constantly evolving nature of our business, make forecasting operating results difficult. Since 2005, we have completed several large, complex and expensive infrastructure upgrades in order to increase our ability to handle larger volumes of sales and to develop or increase our ability to perform a variety of analytical procedures relating to our business. We are continuing to upgrade and further expand these and other components of our infrastructure. In the past, we have experienced difficulties with upgrades of our infrastructure, and have incurred increased expenses as a result of these difficulties. As a result of these expenditures on our infrastructure, our ability to reduce spending is limited. Therefore, any significant shortfall in the revenues for which we have built and are continuing to build our infrastructure would likely harm our business.

The seasonality of our business places increased strain on our operations.

A disproportionate amount of our sales normally occur during our fourth quarter. If we do not stock or are otherwise unable to source products sufficient to meet customer demand, our business would be adversely affected. If we liquidate products, as we have in the past, we may be required to take significant inventory markdowns or write-offs, which could reduce gross profits. We may experience an increase in our net shipping cost due to complimentary upgrades, split-shipments, and additional long-zone shipments necessary to ensure timely delivery for the holiday season. If too many customers access our Website within a short period of time due to increased holiday demand, we may experience system interruptions that make our Website unavailable or prevent us from efficiently fulfilling orders, which may reduce the volume of goods we sell and the attractiveness of our products and services. In addition, we may be unable to adequately staff our fulfillment and customer service centers during peak periods, and delivery services and other fulfillment companies and customer service providers may be unable to meet the seasonal demand.

Significant merchandise returns could harm our business.

We allow our customers to return products, subject to our returns policies. If merchandise returns are significant, our business, prospects, financial condition and results of operations could be harmed. Further, we modify our policies relating to returns from time to time and any policies intended to reduce the number of product returns may result in customer dissatisfaction and fewer repeat customers.

Our pricing strategy may not meet customers' price expectations or result in net income.

Demand for our products is generally highly sensitive to price. Our pricing strategies have had, and may continue to have, a significant impact on our net sales and net income. We often offer discounted prices, and free or discounted shipping as a means of attracting customers and encouraging repeat purchases. Such offers and discounts reduce our margins. In addition, our competitors' pricing and marketing strategies are beyond our control and can significantly impact the results of our pricing strategies. If we fail to meet our customers' price expectations, or if we are unable to compete effectively with our competitors when they engage in aggressive pricing strategies or other competitive activities, our business would suffer.

If the products that we offer on our Website do not reflect our customers' tastes and preferences, our sales and profit margins would decrease.

Our success depends in part on our ability to offer products that reflect consumers' tastes and preferences. Consumers' tastes are subject to frequent, significant and sometimes unpredictable changes. Because some of the products that we sell consist of manufacturers' and retailers' excess inventory, we have limited control over some of the products that we are able to offer for sale. If our merchandise fails to satisfy customers' tastes or respond to changes in customer preferences, our sales could suffer and we could be required to mark down unsold inventory, as we have in the past, which would depress our profit margins. In addition, any failure to offer products in line with customers' preferences could allow our competitors to gain market share. This could have an adverse effect on our business.

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The loss of key personnel or any inability to attract and retain additional personnel could affect our ability to successfully grow our business.

Our performance is substantially dependent on the continued services and on the performance of our senior management and other key personnel. Our performance also depends on our ability to retain and motivate our officers and key employees. The loss of the services of any of our executive officers or other key employees for any reason could harm our business. Occasionally, members of senior management or key employees may find it necessary to take a leave of absence due to medical or other causes. On February 12, 2013 we announced that our Chief Executive Officer and Chairman of the Board, Dr. Patrick M. Byrne, was taking a personal leave of absence for medical reasons. On April, 15, 2013, we announced that Dr. Patrick M. Byrne had resumed his duties as Chief Executive Officer. Leaves of absence for temporary or extended periods may harm our business. We do not have employment agreements with any of our key personnel and we do not maintain "key person" life insurance policies. Our future success also depends on our ability to identify, attract, hire, train, retain and motivate other highly-skilled technical, managerial, editorial, merchandising, marketing and customer service personnel. Competition for such personnel is intense. Our failure to retain and attract the necessary technical, managerial, editorial, merchandising, marketing, and customer service personnel could harm our business.

In order to obtain future revenue growth and sustain profitability, we will have to attract and retain customers on cost-effective terms.

Our success depends on our ability to attract and retain customers on cost-effective terms. We have relationships with online services, search engines, affiliate marketing websites, directories and other website and e-commerce businesses to provide content, advertising banners and other links that direct customers to our Website. We rely on these relationships as significant sources of traffic to our Website and to generate new customers. In the past we have terminated affiliate marketing websites as a result of efforts by certain states to require us to collect sales taxes based on the presence of those third party Internet advertising affiliates in those states, and we are likely to do so again in the future if necessary. If we are unable to develop or maintain these relationships on acceptable terms, our ability to attract new customers and our financial condition would suffer. In addition, certain of our online marketing agreements may require us to pay upfront fees and make other payments prior to the realization of the sales, if any, associated with those payments. Current or future relationships or agreements may fail to produce the sales that we anticipate. We periodically conduct national television and radio branding and advertising campaigns. Such campaigns are expensive and may not result in the cost-effective acquisition of customers.

We may be unable to protect our proprietary technology or keep up with that of our competitors.

Our success depends to a significant degree upon the protection of our software and other proprietary intellectual property rights. We may be unable to deter misappropriation of our proprietary information, detect unauthorized use or take appropriate steps to enforce our intellectual property rights. In addition, our competitors may now have or may in the future develop technologies that are as good as or better than our technology without violating our proprietary rights. Our failure to protect our software and other proprietary intellectual property rights or to utilize technologies that are as good as our competitors' could put us at a disadvantage to our competitors. In addition, the failure of the third parties whose products we offer for sale on our Website to protect their intellectual property rights, including their domain names, could impair our operations. These failures could harm our business.

We may not be able to obtain trademark protection for our marks, which could impede our efforts to build brand identity.

We have filed trademark applications with the Patent and Trademark Office seeking registration of certain service marks and trademarks. There can be no assurance that our applications will be successful or that we will be able to secure significant protection for our service marks or trademarks in the United States or elsewhere as we expand internationally. Our competitors or others could adopt product or service marks similar to our marks, or try to prevent us from using our marks, thereby impeding our ability to build brand identity and possibly leading to customer confusion. Any claim by another party against us or customer confusion related to our trademarks, or our failure to obtain trademark registration, could harm our business.

We may not be able to enforce protection of our intellectual property rights under the laws of other countries.

We sell products internationally and consequently we are subject to risks of doing business internationally as related to our intellectual property, including:

- legal uncertainty regarding liability for the listings and other content provided by our users, including uncertainty as a result of less Internet-friendly legal systems, unique local laws, and lack of clear precedent or applicable law; and

- differing intellectual property laws, which may provide insufficient protection for our intellectual property.

We may be accused of infringing intellectual property rights of third parties.

Other parties have claimed and may claim that we infringe their intellectual property rights. We have been and are subject to, and expect to continue to be subject to, legal claims of alleged infringement of the intellectual property rights of third parties. The ready availability of damages, royalties and the potential for injunctive relief has increased the defense litigation costs of patent infringement claims, especially those asserted by third parties whose sole or primary business is to assert such claims. Such claims, even if not meritorious, may result in significant expenditure of financial and managerial resources, and the payment of damages or settlement amounts. Additionally, we may become subject to injunctions prohibiting us from using software or business processes we currently use or may need to use in the future, or requiring us to obtain licenses from third parties when such licenses may not be available on financially feasible terms or terms acceptable to us or at all. In addition, we may not be able to obtain on favorable terms, or at all, licenses or other rights with respect to intellectual property we do not own in providing e-commerce services to other businesses and individuals under commercial agreements.

Our business and reputation may be harmed by the offering or sale of pirated, counterfeit or illegal items by third parties, and by intellectual property litigation.

We have received in the past, and we anticipate we will receive in the future, communications alleging that items offered or sold through our Website infringe third party copyrights, trademarks and trade names or other intellectual property rights or that we have otherwise infringed third parties’ past, current or future intellectual property rights. We may be unable to prevent third parties from offering and selling unlawful goods, and we may be subject to allegations of civil or criminal liability for unlawful activities carried out by third parties through our Website. We may implement measures in an effort to protect against these potential liabilities that could require us to spend substantial resources and/or to reduce revenues by discontinuing certain service offerings. Any costs incurred as a result of liability or asserted liability relating to the sale of unlawful goods or the unlawful sale of goods could harm our business. Resolving litigation or claims regarding patents or other intellectual property, whether meritorious or not, could be costly, time-consuming, cause service delays, divert our management and key personnel from our business operations, require expensive or unwanted changes in our methods of doing business or require us to enter into costly royalty or licensing agreements, if available. As a result, these claims could harm our business. Negative publicity generated as a result of the foregoing could damage our reputation, harm our business and diminish the value of our brand name.

Use of social media may adversely impact our reputation.

There has been a marked increase in use of social media platforms and similar devices, including weblogs (blogs), social media websites, and other forms of Internet-based communications which allow individual access to a broad audience of consumers and other interested persons. Consumers value readily available information concerning retailers, manufacturers, and their goods and services and often act on such information without further investigation, authentication and without regard to its accuracy. The availability of information on social media platforms and devices is virtually immediate as is its impact. Social media platforms and devices immediately publish the content their subscribers and participants post, often without filters or checks on accuracy of the content posted. The opportunity for dissemination of information, including inaccurate information, is virtually limitless. Information concerning or affecting us may be posted on such platforms and devices at any time. Information posted may be inaccurate and adverse to us, and it may harm our business. The harm may be immediate without affording us an opportunity for redress or correction. Such platforms also could be used for the dissemination of trade secret information or compromise of other valuable company assets, any of which could harm our business.

Our car listing service may be subject to a variety of regulatory requirements and risks.

Many states and other jurisdictions, including Utah, where we are located, have regulations governing the conduct of car sellers and public advertisement for car sales. Generally, these regulations govern the conduct of those sellers advertising their automobiles for sale and are not directly applicable to those providing the medium through which the advertisement is made available to the public. Sellers are often subject to regulations in the nature of “truth in advertising laws.” We have no ability to know whether the information sellers provide is correct. While our site terms and conditions of usage prohibit unlawful acts, we cannot assure that sellers will comply with all laws and regulations applicable to them and their transactions. The application of these regulations to online car listing service providers is not clear. Although we do not expect these laws to

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have a significant effect on our listing service, we will incur costs in complying with these laws, and we may from time to time be required to make changes in our service that may increase our costs, reduce our revenues, cause us to prohibit certain listing or advertising practices, or make other changes that may adversely affect our car listing service. Further, like our shopping business, our car listing service is subject to most of the same laws and regulations that apply to other companies conducting business on and off the Internet. To the extent that current or future laws or regulations prevent users from selling items on our car listing site, they could harm our business. In addition, any negative publicity we receive regarding any allegations of unlawful or deceptive conduct may damage our reputation, our ability to attract new customers to our main shopping site, and the Overstock.com brand name generally.

We are involved in substantial litigation.

From time to time we receive claims of and become subject to consumer protection, employment, intellectual property and other commercial litigation related to the conduct and operation of our business and the sale of products on our Website. In connection with such litigation, we may be subject to significant damages or equitable remedies. In addition, we have in the past been, are now, and in the future may be, involved in substantial litigation in which we are the plaintiff, including litigation regarding the constitutionality of certain state tax laws, and the prime broker litigation described below. Any of such litigation, whether as plaintiff or defendant, could be costly and time consuming and could divert management and key personnel from our regular business operations. We do not currently believe that any of our outstanding litigation will have a material adverse effect on our business, prospects, financial condition or results of operations. However, due to the uncertainty of litigation and depending on the amount and the timing, an unfavorable resolution of some or all of these matters could materially affect our business, prospects, financial condition and results of operations.

California District Attorneys have obtained a judgment against us for alleged violations of California law.

In November 2010, District Attorneys for the California Counties of Alameda, Marin, Monterey, Napa, Santa Clara, Shasta and Sonoma filed a lawsuit seeking damages and an injunction, alleging violations of California consumer protection laws, alleging we made untrue or misleading statements concerning our pricing, price reductions, sources of products and shipping charges. The complaint asked for damages in the amount of not less than $15 million. We disputed the allegations and tried the case to the Judge of the court in September 2013. On January 3, 2014, the court issued a tentative ruling in favor of the District Attorneys, which became a final Statement of Decision on February 5, 2014. The decision provides for an injunction that prescribes disclosures necessary for certain types of price advertising and price reductions and imposes civil penalties of $3,500 per day for practices from March 2006 through September 2008, and $2,000 per day for September 2008 through September 2013, totaling $6.8 million. The court issued a Final Judgment February 19, 2014 reflecting the Court’s Statement of Decision. Plaintiff may apply to the court for a reimbursement of costs. It is unknown whether the plaintiff will request or have entitlement to an award of attorneys fees, or whether the court would grant any such request. While we intend to comply with the judgment, we will appeal. We will likely have to post an appeal bond under California rules or alternatively, by agreement, provide some form of surety in the amount of the ordered penalty. An unfavorable resolution of this matter on appeal could materially affect our business, prospects, financial condition and results of operations.

Our prime broker litigation may have an adverse effect on our business and financial condition.

We remain involved in substantial litigation against Goldman Sachs Group, Inc., Goldman Sachs & Co., Goldman Sachs Execution & Clearing L.P., Merrill Lynch, Pierce, Fenner & Smith, Inc., and Merrill Lynch Professional Clearing Corporation, and the use of management’s time and attention in connection with the litigation and related matters may reduce the time management is able to spend on other aspects of our business, which may have adverse effects on other aspects of our business. To the extent that any such adverse effects exceed any benefits we may realize from the litigation, it could harm our business, prospects, financial condition and results of operation.

Public statements we or our chairman of the board of directors, Patrick M. Byrne, have made or may make in the future may antagonize regulatory officials or others.

We and our chairman of the board of directors, Patrick M. Byrne, have from time to time made public statements regarding our or his beliefs about matters of public interest, including statements regarding naked short selling and regulatory capture. Some of those public statements have been critical of the Securities and Exchange Commission and other regulatory agencies. These public statements may have consequences for us, whether as a result of increased regulatory scrutiny or otherwise.

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The price of our securities may be volatile and you may lose all or a part of your investment.

The market price of our common stock historically has been subject to significant fluctuations. These fluctuations could continue. It is possible that in future periods our results of operations may be below the expectations of public market analysts and investors. If this occurs, the market price of our securities may decline.
Our quarterly operating results are volatile and may adversely affect the market price of our securities.

Our future revenues and operating results have varied in the past and may continue to vary significantly from quarter to quarter due to a number of factors, many of which are outside our control, and any of which could harm our business. As a result, we believe that quarterly comparisons of our operating results are not necessarily meaningful and that you should not rely on the results of one quarter as an indication of our future performance. In addition to the other risk factors described in this report, additional factors that have caused and/or could cause our quarterly operating results to fluctuate and in turn affect the market price of our securities include:

- increases in the cost of advertising and changes in our sales and marketing expenditures;
- our inability to retain existing customers or encourage repeat purchases;
- the extent to which our existing and future marketing campaigns are successful;
- price competition that results in lower profit margins or losses;
- the amount and timing of operating costs and capital expenditures relating to the expansion of our business operations and infrastructure;
- the amount and timing of our purchases of inventory;
- our inability to manage distribution operations or provide adequate levels of customer service;
- increases in the cost of fuel and transportation;
- our ability to successfully integrate operations and technologies from acquisitions or other business combinations;
- our efforts to offer new lines of products and services; and
- our ability to attract users to our shopping and other sites.

Our operating results may fluctuate depending on the season, and such fluctuations may affect the market price of our securities.

We have experienced and expect to continue to experience fluctuations in our operating results because of seasonal fluctuations in traditional retail patterns. Sales in the retail and wholesale industry tend to be significantly higher in the fourth calendar quarter of each year than in the preceding three quarters due primarily to increased shopping activity during the holiday season. However, there can be no assurance that our sales in the fourth quarter will exceed those of the preceding quarters or, if the fourth quarter sales do exceed those of the preceding quarters, that we will be able to manage the increased sales effectively. Further, we generally increase our inventories substantially in anticipation of holiday season shopping activity, which has a negative effect on our cash flow. Securities analysts and investors may inaccurately estimate the effects of seasonality on our results of operations in one or more future quarters and, consequently, our operating results may fall below expectations, causing the market price of our securities to decline.

Sales by our significant stockholders could have an adverse effect on the market price of our stock.

Several of our stockholders own significant portions of our common stock. If one or more of stockholders were to sell all or a portion of their holdings of our common stock, the market price of our common stock could be negatively impacted. The effect of such sales, or of significant portions of our stock being offered or made available for sale, could result in strong downward pressure on our stock price. Investors should be aware that they could experience significant short-term volatility in our stock if such stockholders decide to sell all or a portion of their holdings of our common stock at once or within a short period of time. In addition, the transfer of ownership of 50% or more of our outstanding shares within a three year period could adversely affect our ability to use our net operating losses to offset future taxable net income.

We do not intend to pay dividends on our common stock and you may lose the entire amount of your investment in our common stock.

We have never declared or paid any cash dividends on our common stock and do not intend to pay dividends on our common stock for the foreseeable future. We intend to invest our future earnings, if any, to fund our growth. Therefore, you will not receive any funds without selling your shares. We cannot assure that you will receive a positive return on your investment when you sell your shares or that you will not lose the entire amount of your investment.

Our Amended and Restated Certificate of Incorporation, Amended and Restated Bylaws and the Delaware General Corporation Law contain anti-takeover provisions which could discourage or prevent a takeover, even if an acquisition would be beneficial to our stockholders.

Several provisions of our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws could discourage potential acquisition proposals and could delay or prevent a change in control of our company even if that change in control would be beneficial to our stockholders. For example, only one-third of our board of directors is elected at each of our annual meetings of stockholders, which will make it more difficult for a potential acquirer to change the management of our company, even after acquiring a majority of the shares of our common stock. These provisions, which cannot be amended without the approval of two-thirds of our stockholders, could diminish the opportunities for a stockholder to participate in tender offers, including tender offers at a price above the then current market value of our common stock. In addition, our board of directors, without further stockholder approval, may issue preferred stock, with such terms as the board of directors may determine, that could have the effect of delaying or preventing a change in control of our company. The issuance of preferred stock could also adversely affect the voting powers of the holders of common stock, including the loss of voting control to others. We are also afforded the protections of Section 203 of the Delaware General Corporation Law, which could delay or prevent a change in control of our company or could impede a merger, consolidation, takeover or other business combination involving our company or discourage a potential acquirer from making a tender offer or otherwise attempting to obtain control of our company.

The price of our stock may be vulnerable to manipulation.

We filed an unfair business practice lawsuit against Morgan Stanley & Co. Incorporated, Goldman Sachs & Co., Bear Stearns Companies, Inc., Bank of America Securities LLC, Bank of New York, Citigroup Inc., Credit Suisse (USA) Inc., Deutsche Bank Securities, Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc., and UBS Financial Services, Inc., and settled the case with respect to all defendants except Goldman Sachs Group, Inc., Goldman Sachs & Co., Goldman Sachs Execution & Clearing L.P.; Merrill Lynch, Pierce, Fenner & Smith, Inc., and Merrill Lynch Professional Clearing Corporation. In January 2012, the trial court granted the remaining defendants' motion for summary judgment. We have appealed the ruling.

We believe these remaining defendants engaged in unlawful actions and have caused substantial harm to Overstock, and that certain of the defendants have made efforts to drive the market price of Overstock's common stock down. To the extent that the defendants or other persons engage in any such actions or take any other actions to interfere with or destroy or harm Overstock's existing and/or prospective business relationships with its suppliers, bankers, customers, lenders, investors, prospective investors or others, our business, prospects, financial condition and results of operation could be harmed, and the price of our common stock may be more volatile than it might otherwise be and/or may trade at prices below those that might prevail in the absence of any such efforts. The practice of "abusive naked short selling" continues to place our stock at risk for manipulative attacks by large investment pools and prime brokers.

Abusive naked short selling is the practice by which short sellers place large short sell orders for shares without first borrowing the shares to be sold, or without having first adequately located such shares and arranged for a firm contract to borrow such shares prior to the delivery date set to close the sale. While selling broker dealers are by rule required to deliver shares to close a transaction by a certain date, and while purchasing broker-dealers are obligated by rule to purchase the sold quantity of shares when they are not delivered to close the sale, these rules are often ignored. Abusive naked short selling has a depressive effect on share prices when it is allowed to persist because the economic effect of abusive naked short selling is the oversupply of counterfeit stock to the market. We believe the regulations designed to address this abusive practice are both inadequately structured and inadequately enforced. Consequently, we believe that without the enactment of adequate regulations and the enforcement necessary to curb these abuses, the manipulations achieved through abusive naked short selling are likely to continue. We believe that our stock has been subject to these abusive practices by those attempting to manipulate

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its price downward. To the extent that our stock is subject to these practices in the future, our stock may be more volatile than it might otherwise be and/or may trade at prices below those that might prevail in the absence of such abuses.

In the past, our stock has consistently been on the Regulation SHO threshold list.

Regulation SHO requires the stock exchanges to publish daily a list of companies whose stock has failures-to-deliver above a certain threshold. It also requires mandatory close-outs for open fail-to-deliver positions in threshold securities persisting for over 13 days, with the aim that no security would appear on the threshold for any extended period. Despite that aim, our common stock has frequently appeared on the Regulation SHO threshold list for extended and continuous periods and, while we do not currently appear on the Regulation SHO threshold list, in the past our stock has been on the list for more trading days than any other company.

Any investment in our securities involves a high degree of risk. Investors should consider carefully the risks and uncertainties described above, and all other information in this Form 10-K and in any reports we file with the SEC after we file this Form 10-K, before deciding whether to purchase or hold our securities. Additional risks and uncertainties not currently known to us or that we currently deem immaterial may also become important factors that may harm our business. The occurrence of any of the risks described in this Form 10-K could harm our business. The trading price of our securities could decline due to any of these risks and uncertainties, and investors may lose part or all of their investment.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Corporate office space

We lease approximately 128,000 square feet in the Old Mill Corporate Center III in Salt Lake City, Utah for a term expiring in 2015. We are exploring the short-term extension of this lease and relocating this corporate facility to a different location.

We lease approximately 872 square feet in The Institute of Technology in Sligo, Ireland for a term expiring in 2014.

Warehouse and customer service space

We lease approximately 687,000 square feet for our warehouse and customer service operations in Salt Lake City, Utah for a term expiring in 2026.

We lease approximately 15,000 square feet for customer service operations in Tooele, Utah for a term expiring in 2015.

We lease approximately 51,500 square feet of warehouse space in Hebron, Kentucky beginning in March 2013, for a term expiring in 2016.

We lease approximately 100,000 square feet of warehouse space in Jonestown, Pennsylvania beginning in October 2013, for a term expiring in 2014.

Co-location data center

We lease approximately 4,000 square feet at Old Mill Corporate Center I in Salt Lake City, Utah for a data center for a term expiring in 2017.

We lease approximately 3,000 square feet in Salt Lake City, Utah for a data center for a term expiring in 2016.

We use all of our properties in both our direct and fulfillment partner businesses. We believe that the above listed facilities will be sufficient for our needs for at least the next twelve months, subject to potential seasonal requirements for additional warehouse and customer service space during the fourth quarter.

ITEM 3. LEGAL PROCEEDINGS

The information set forth under Item 15 of Part IV, "Financial Statements—Note 13—Commitments and Contingencies, subheading Legal Proceedings," contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K is incorporated by reference in answer to this Item.

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## ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

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PART II

ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market information

Our common stock is traded on the Nasdaq Global Market under the symbol "OSTK." The following table sets forth, for the periods indicated, the high and low sales prices per share for our common stock as reported by Nasdaq.

| | Common Stock Price | |
|---|---|---|
| | High | Low |
| Year Ended December 31, 2013 | | |
| First Quarter | 16.50 | 11.29 |
| Second Quarter | 28.20 | 11.46 |
| Third Quarter | 34.97 | 25.65 |
| Fourth Quarter | 30.83 | 23.22 |
| Year Ended December 31, 2012 | | |
| First Quarter | 7.71 | 5.17 |
| Second Quarter | 6.95 | 5.01 |
| Third Quarter | 10.55 | 6.21 |
| Fourth Quarter | 15.90 | 10.11 |

Stock Performance Graph

The stock performance graph is included in Part III, Item 12.

Holders

As of February 17, 2014, there were 171 holders of record of our common stock. Many of our shares of common stock are held by brokers and other institutions on behalf of the beneficial owners.

Dividends

We have never declared or paid any cash dividends on our common stock. We currently intend to retain any earnings for future growth and do not anticipate paying any cash dividends in the foreseeable future. Any future determination to pay dividends will be at the discretion of our board of directors and will depend on our results of operations, financial conditions, contractual and legal restrictions and other factors the board of directors deems relevant.

Recent sales of unregistered securities

We maintain a Non-Qualified Deferred Compensation plan for senior management. The plan allows eligible members of senior management to defer their receipt of compensation, subject to the restrictions contained in the plan. To the extent that interests in the plan constitute securities, we believe that the issuance of the interests was exempt from the registration requirements of the Securities Act of 1933, as amended, pursuant to Section 4(2) thereof and Rule 506 of Regulation D thereunder as a transaction not involving a public offering. The interests were not sold for cash or other consideration, and there were no proceeds to us.

Issuer purchases of equity securities

The following table sets forth all purchases made by us or on our behalf or any "affiliated purchaser" as defined in Rule 10b-18(a)(3) under the Exchange Act, of shares of our common stock made during each month within the fourth quarter of 2013, including all purchases made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Column (a) sets forth the total number of shares purchased, and the footnotes to the table disclose the number of shares purchased other than pursuant to a publicly announced plan or program and the nature of any such purchases. Column (b) sets forth the average price paid per share. Column (c) sets forth the total number of shares purchased as part of publicly announced repurchase plans or programs. Column (d) sets forth the maximum number (or approximate dollar value) of shares that may yet be purchased under the plans or programs.

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| Period | (a) Total Number of Shares (or Units) Purchased | | (b) Average Price Paid per Share or Unit | (c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs | (d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs |
|---|---|---|---|---|---|
| October 1, 2013 to October 31, 2013 | 95 | | $25.18 | — | $— |
| November 1, 2013 to November 30, 2013 | — | | — | — | — |
| December 1, 2013 to December 31, 2013 | — | | — | — | — |
| Total | 95 | (1) | | — | $— |

(1) Represents 95 shares withheld for minimum tax withholding purposes upon the vesting of a portion of restricted stock units.

Stock based compensation

Stock options

Our board of directors adopted the 2005 Equity Incentive Plan, in April 2005, and it was most recently amended and restated and re-approved by the stockholders on May 3, 2012 (as so amended and restated, the "Plan"). Under the Plan, the board of directors may issue incentive stock options to our employees and directors and non-qualified stock options to our consultants, as well as restricted stock units and other types of equity awards of the Company. Options granted under the Plan generally expire at the end of ten years and vest on a straight line basis in accordance with a vesting schedule determined by our board of directors, usually over four years from the grant date. At December 31, 2013, 2.8 million shares of stock remained available for future grants under the Plan.

The following is a summary of stock option activity (amounts in thousands, except per share data):

| | 2013 | | | 2012 | | | 2011 | | |
|---|---|---|---|---|---|---|---|---|---|
| | Shares | | Weighted Average Exercise Price | Shares | | Weighted Average Exercise Price | Shares | | Weighted Average Exercise Price |
| Outstanding—beginning of year | 364 | | $17.34 | 405 | | $17.58 | 496 | | $18.09 |
| Exercised | (89 | ) | 17.45 | — | | — | — | | — |
| Expired/Forfeited | (2 | ) | 17.08 | (41 | ) | 20.06 | (91 | ) | 20.55 |
| Outstanding—end of year | 273 | | $17.30 | 364 | | $17.34 | 405 | | $17.58 |
| Options exercisable at year-end | 273 | | $17.30 | 364 | | $17.34 | 404 | | $17.59 |

Stock options vest over four years at 28% at the end of the first year and 2% each month thereafter. During the years ended December 31, 2013, 2012 and 2011, we recorded stock based compensation related to stock options of $0, $3,000 and $200,000, respectively.

Restricted stock units activity

During the years ended December 31, 2013, 2012 and 2011, we granted 275,000, 795,000 and 268,000 restricted stock units, respectively, under the Plan. The cost of restricted stock units is determined using the fair value of our common stock on the date of the grant and compensation expense is either recognized on a straight line basis over the vesting schedule or on an accelerated schedule when vesting of restricted stock awards exceeds a straight-line basis. The weighted average grant date fair value of restricted stock units granted during the years ended December 31, 2013, 2012 and 2011 was $16.12, $6.75 and $15.47, respectively.

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The following is a summary of restricted stock unit activity (amounts in thousands, except per share data):

| | 2013 | | 2012 | | 2011 | |
|---|---|---|---|---|---|---|
| | Units | Weighted Average Grant Date Fair Value | Units | Weighted Average Grant Date Fair Value | Units | Weighted Average Grant Date Fair Value |
| Outstanding—beginning of year | 1,003 | $8.81 | 522 | $13.40 | 685 | $12.08 |
| Granted at fair value | 275 | 16.12 | 795 | 6.75 | 268 | 15.47 |
| Vested | (339) | 10.23 | (240) | 12.11 | (318) | 12.20 |
| Forfeited | (235) | 9.38 | (74) | 8.25 | (113) | 13.88 |
| Outstanding—end of year | 704 | $10.79 | 1,003 | $8.81 | 522 | $13.40 |

Restricted stock units granted in 2013 vest over three years at 40% at the end of the first year, 30% at the end of the second year and 30% at the end of the third year. Restricted stock units granted in or prior to 2012 vest over three years at 25% at the end of the first year, 25% at the end of the second year and 50% at the end of the third year. Each restricted stock unit represents the right to one share of common stock upon vesting. During the years ended December 31, 2013, 2012 and 2011, we recorded stock based compensation related to restricted stock units of $3.3 million, $3.5 million and $2.8 million, respectively.

Subsequent to 2013, we granted 232,000 additional restricted stock units. These restricted stock units vest over three years with one-third at the end of each of the first, second and third years.

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ITEM 6. SELECTED FINANCIAL DATA

The selected consolidated financial data presented below should be read in conjunction with the consolidated financial statements of Overstock.com, Inc. and subsidiaries and related footnotes included elsewhere in this Annual Report on Form 10-K and the discussion under Item 7—"Management's Discussion and Analysis of Financial Condition and Results of Operations." The selected consolidated financial data has been derived from our audited consolidated financial statements included elsewhere in this Form 10-K. The historical financial and operating information may not be indicative of our future performance.

| | Year ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2013 | 2012 | 2011 | 2010 | 2009 |
| | (in thousands, except per share data) | | | | |
| Consolidated Statement of Operations Data: | | | | | |
| Revenue, net | | | | | |
| Direct | $156,032 | $155,516 | $163,609 | $209,646 | $150,901 |
| Fulfillment partner | 1,148,185 | 943,773 | 890,668 | 880,227 | 725,868 |
| Total net revenue | 1,304,217 | 1,099,289 | 1,054,277 | 1,089,873 | 876,769 |
| Cost of goods sold | | | | | |
| Direct | 136,282 | 140,536 | 149,660 | 187,124 | 130,890 |
| Fulfillment partner | 920,275 | 760,323 | 725,529 | 713,109 | 581,127 |
| Total cost of goods sold | 1,056,557 | 900,859 | 875,189 | 900,233 | 712,017 |
| Gross profit | 247,660 | 198,430 | 179,088 | 189,640 | 164,752 |
| Operating expenses: | | | | | |
| Sales and marketing | 91,609 | 63,467 | 61,813 | 61,334 | 55,549 |
| Technology | 71,788 | 65,467 | 67,043 | 58,260 | 52,336 |
| General and administrative | 68,169 | 57,259 | 67,766 | 55,650 | 48,906 |
| Restructuring (1) | (471) | 76 | — | (569) | (66) |
| Total operating expenses | 231,095 | 186,269 | 196,622 | 174,675 | 156,725 |
| Operating income (loss) | 16,565 | 12,161 | (17,534) | 14,965 | 8,027 |
| Interest income | 127 | 116 | 161 | 157 | 170 |
| Interest expense | (113) | (809) | (2,485) | (2,962) | (3,470) |
| Other income (expense), net | (235) | 3,686 | 278 | 2,088 | 3,277 |
| Income (loss) before income taxes | 16,344 | 15,154 | (19,580) | 14,248 | 8,004 |
| Provision (benefit) for income taxes | (72,165) | 485 | (142) | 359 | 257 |
| Net income (loss) | $88,509 | $14,669 | $(19,438) | $13,889 | $7,747 |
| Deemed dividend related to redeemable common stock | — | — | (12) | (112) | (48) |
| Net income (loss) attributable to common shares | $88,509 | $14,669 | $(19,450) | $13,777 | $7,699 |
| Net income (loss) per common share—basic: | | | | | |
| Net income (loss) attributable to common share—basic | $3.73 | $0.63 | $(0.84) | $0.60 | $0.34 |
| Weighted average common shares outstanding—basic | 23,714 | 23,387 | 23,259 | 23,019 | 22,821 |
| Net income (loss) per common share—diluted: | | | | | |
| Net income (loss) attributable to common shares—diluted | $3.64 | $0.62 | $(0.84) | $0.59 | $0.33 |
| Weighted average common shares outstanding—diluted | 24,294 | 23,672 | 23,259 | 23,366 | 23,067 |

(1) During the fourth quarter of 2006, we commenced implementation of a facilities consolidation and restructuring program designed to reduce the overall expense structure in an effort to improve future operating performance (see Item 15 of Part IV, "Financial Statements"-Note 3-"Restructuring Expense").

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| | As of December 31, | | | | |
|---|---|---|---|---|---|
| | 2013 | 2012 | 2011 | 2010 | 2009 |
| | (in thousands) | | | | |
| Balance Sheet Data: | | | | | |
| Cash and cash equivalents | $148,665 | $93,547 | $96,985 | $124,021 | $139,757 |
| Restricted cash | 1,580 | 1,905 | 2,036 | 2,542 | 4,414 |
| Working capital | 25,709 | 7,497 | (14,129) | 14,746 | 51,236 |
| Total assets | 319,767 | 181,985 | 179,559 | 217,959 | 216,500 |
| Total indebtedness | 3,155 | 1,848 | 18,619 | 52,845 | 61,687 |
| Redeemable common stock | — | — | — | 570 | 744 |
| Stockholders' equity | 122,891 | 30,962 | 13,237 | 30,658 | 10,800 |

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## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis contains forward-looking statement relating to future events or our future financial or operating performance that involve risks and uncertainties, as set forth above under "Special Note Regarding Forward-Looking Statements." Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors described in this Form 10-K, including those set forth in the Special Note Regarding Forward-Looking Statements or in Item 1A under the heading "Risk Factors" or elsewhere in this Form 10-K.

### Introduction

We are an online retailer offering discount brand name, non-brand name and closeout merchandise, including furniture, home decor, bedding and bath, housewares, jewelry and watches, apparel and designer accessories, electronics and computers, and sporting goods, among other products. We also sell hundreds of thousands of best seller and current run books, magazines, CDs, DVDs and video games ("BMMG"). We sell these products through our Internet websites located at www.overstock.com, www.o.co and www.o.biz ("Website"). Although our three websites are located at different domain addresses, the technology and equipment and processes supporting the Website and the process of order fulfillment described herein are the same for all three websites.

Our company, based in Salt Lake City, Utah, was founded in 1997. We launched our initial website in March 1999. Our Website offers our customers an opportunity to shop for bargains conveniently, while offering our suppliers an alternative inventory liquidation or sales channel. We continually add new, and sometimes limited, inventory to our Website in order to create an atmosphere that encourages customers to visit frequently and purchase products before our inventory sells out. We sell products primarily in the United States.

As used herein, "Overstock," "Overstock.com," "O.co," "we," "our" and similar terms include Overstock.com, Inc. and its subsidiaries, unless the context indicates otherwise.

### Our Business

We deal primarily in discount, replenishable and closeout merchandise and use the Internet to aggregate both supply and demand to create an efficient marketplace for selling these products. We provide manufacturers with a one-stop liquidation channel to sell both large and small quantities of excess, closeout and replenishable inventory without disrupting sales through traditional channels. The merchandise offered on our Website is from a variety of sources including well-known, brand-name manufacturers. We have organized our shopping business (sales of product offered through the Shopping Section of our Website) into two principal segments—a "direct" business and a "fulfillment partner" business. We currently offer approximately 491,000 non-BMMG products and approximately 805,000 BMMG products. Consumers and businesses are able to access and purchase our products 24 hours a day from the convenience of a computer, Internet-enabled mobile telephone or other Internet-enabled devices. Our team of customer service representatives assists customers by telephone, instant online chat and e-mail. We also derive revenue from other businesses advertising products or services on our Website. Nearly all of our sales are to customers located in the United States. During the years ended December 31, 2013, 2012 and 2011 no single customer accounted for more than 1% of our total net revenue.

#### Direct business

Our direct business includes sales made to individual consumers and businesses, which are fulfilled primarily from our warehouse in Salt Lake City, Utah. During the year ended December 31, 2013, we fulfilled approximately 12% of our order volume through our warehouse, which generally ships between 3,000 and 5,000 packages per day and up to approximately 6,000 orders per day during peak periods, using overlapping daily shifts.

#### Fulfillment partner business

For our fulfillment partner business, we sell merchandise of other retailers, cataloguers or manufacturers ("fulfillment partners") primarily through our Website. We are considered to be the primary obligor for the majority of these sales transactions and we record revenue from the majority of these sales transactions on a gross basis. Our use of the term "partner" or "fulfillment partner" does not mean that we have formed any legal partnerships with any of our fulfillment partners. We currently have relationships with approximately 2,400 third parties who supply approximately 488,000 non-BMMG products, as well as most of the BMMG products, on our Website. These third party fulfillment partners perform essentially the same fulfillment operations as our warehouses, such as order picking and shipping; however, we handle returns and customer service related to substantially all orders placed through our Website. Revenue generated from sales on our Shopping site from both the direct and fulfillment partner businesses is recorded net of returns, coupons and other discounts.

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Both direct and fulfillment partner revenues are seasonal, with revenues historically being the highest in the fourth quarter, which ends December 31, reflecting higher consumer holiday spending. We anticipate this will continue in the foreseeable future.

Generally, we require verification of receipt of payment, or authorization from credit card or other payment vendors whose services we offer to our customers (such as PayPal and BillMeLater), before we ship products to consumers or business purchasers. From time to time we grant credit to our business purchasers with normal credit terms (typically 30 days). For sales in our fulfillment partner business, we generally receive payments from our customers before our payments to our suppliers are due.

Other offerings

Within our website, we offer additional products or services that complement our primary offerings, but are not significant to our revenues. These include:

- Worldstock Fair Trade, a store within our website that offers handcrafted products made by artisans all over the world, which emphasizes sustainability, fairness, and transparency, and which we attempt to run at 0% profit by donating net profits to fund philanthropic projects in several countries, including Guatemala, Kenya, Malawi, and Nepal;
- Main Street Revolution, a store within our website that features products from small businesses across the United States who offer their products using our national marketing and distribution channels;
- a consignment service for suppliers where the suppliers' merchandise is stored in and shipped from our warehouses;
- ecommerce marketplace channels, where some of our products are offered for sale in on-line marketplaces of other Internet retailers' websites;
- our international business where we offer products to customers outside the United States using U.S.-based third party logistics providers (we do not have sales operations outside the U.S.); and
- an online car listing service which allows sellers to list vehicles for sale and allows buyers to review vehicle descriptions and post offers to purchase, and provides the means for prospective purchasers to contact sellers for further information and negotiations on the purchase of an advertised vehicle.

Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles ("GAAP") requires estimates and assumptions that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities in the consolidated financial statements and accompanying notes. The Securities and Exchange Commission ("SEC") has defined a company's critical accounting policies as the ones that are most important to the portrayal of the company's financial condition and results of operations, and which require the company to make its most difficult and subjective judgments, often as a result of the need to make estimates of matters that are inherently uncertain. Based on this definition, we have identified the critical accounting policies, estimates and judgments addressed below. We also have other key accounting policies, which involve the use of estimates, judgments, and assumptions that are significant to understanding our results. For additional information, see Item 15 of Part IV, "Financial Statements"—Note 2—"Accounting Policies." Although we believe that our estimates, assumptions, and judgments are reasonable, they are based upon information presently available. Actual results may differ significantly from these estimates. Our critical accounting policies are as follows:

- revenue recognition;
- estimating valuation allowances and accrued liabilities (specifically, the allowances for returns and obsolete and damaged inventory);
- internal use software and website development (acquired and developed internally);

- accounting for income taxes;
- valuation of long-lived and intangible assets and goodwill; and
- loss contingencies.

Revenue Recognition

We derive our revenue primarily from direct revenue and fulfillment partner revenue from merchandise sales. We also earn revenue from advertising on our shopping and other pages. We have organized our operations into two principal segments based on the primary source of revenue: direct revenue and fulfillment partner revenue (see Note 22—Business Segments).

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Revenue is recognized when the following revenue recognition criteria are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or the service has been provided; (3) the selling price or fee revenue earned is fixed or determinable; and (4) collection of the resulting receivable is reasonably assured. Revenue related to merchandise sales is recognized upon delivery to our customers. As we ship high volumes of packages through multiple carriers, it is not practical for us to track the actual delivery date of each shipment. Therefore, we use estimates to determine which shipments are delivered and, therefore, recognized as revenue at the end of the period. Our delivery date estimates are based on average shipping transit times, which are calculated using the following factors: (i) the type of shipping carrier (as carriers have different in-transit times); (ii) the fulfillment source (either our warehouses or those of our fulfillment partners); (iii) the delivery destination; and (iv) actual transit time experience, which shows that delivery date is typically one to eight business days from the date of shipment. We review and update our estimates on a quarterly basis based on our actual transit time experience. However, actual shipping times may differ from our estimates.

Based upon our historical experience, revenue typically increases during the fourth quarter because of the holiday retail season.

The following table shows the effect that hypothetical changes in the estimate of average shipping transit times would have had on the reported amount of revenue and net income for the year ended December 31, 2013 (in thousands):

| | Year Ended December 31, 2013 | |
|---|---|---|
| Change in the Estimate of Average Transit Times (Days) | Increase (Decrease) Revenue | Increase (Decrease) Net Income |
| 2 | $(10,744) | $(1,470) |
| 1 | $(3,320) | $(447) |
| As reported | As reported | As reported |
| (1) | $3,336 | $459 |
| (2) | $7,072 | $964 |

When we are the primary obligor in a transaction, are subject to inventory risk, have latitude in establishing prices and selecting suppliers, or have several but not all of these indicators, revenue is recorded gross. If we are not the primary obligor in the transaction and amounts earned are determined using a fixed percentage, revenue is recorded on a net basis. Currently, the majority of both direct revenue and fulfillment partner revenue is recorded on a gross basis, as we are the primary obligor. In our statements of operations, we present revenue net of sales taxes.

We periodically provide incentive offers to our customers to encourage purchases. Such offers include current discount offers, such as percentage discounts off current purchases and other similar offers, which, when used by our customers, are treated as a reduction of revenue.

Direct revenue

Direct revenue is derived from merchandise sales to individual consumers and businesses that are fulfilled from our warehouses. Direct revenue comes from merchandise sales that occur primarily through our Website, but may also occur through offline and other channels.

Fulfillment partner revenue

Fulfillment partner revenue is derived from merchandise sales which fulfillment partners ship directly to consumers and businesses from warehouses maintained by our fulfillment partners. Fulfillment partner revenue comes from merchandise sales that occur primarily through our Website, but may also occur through offline and other channels.

Club O loyalty program

We have a customer loyalty program called Club O for which we sell annual memberships. We record membership fees as deferred revenue and we recognize revenue ratably over the membership period. The Club O loyalty program allows members to earn reward dollars for qualifying purchases made on our Website. We also have a co-branded credit card program (see “Co-branded credit card revenue” below for more information). Co-branded cardholders are also Club O members and earn additional reward dollars for purchases made on our Website, and from other merchants. Reward dollars earned may be redeemed on future purchases made through our Website. Club O reward dollars expire 90 days after the customer’s Club O membership expires. We account for these transactions as multiple element arrangements and allocate revenue to the elements using their relative fair values. We include the value of reward dollars earned in deferred revenue and we record it as a reduction of revenue at the time the reward dollars are earned.

We recognize revenue for Club O reward dollars when customers redeem their reward dollars as part of a purchase at our Website. We recognize other income when Club O reward dollars expire or the likelihood of reward dollars being redeemed by a customer is remote ("reward dollar breakage"). Reward dollar breakage is currently recognized when the reward dollars expire.

In instances where customers receive free Club O reward dollars not associated with any purchases, we account for these transactions as sales incentives such as coupons and record a reduction of revenue at the time the reward dollars are redeemed.

Deferred revenue

Customer orders are recorded as deferred revenue prior to delivery of products or services ordered. We record amounts received for Club O membership fees as deferred revenue and we recognize it ratably over the membership period. We record Club O reward dollars earned from purchases as deferred revenue at the time they are earned and we recognize it as revenue upon redemption. If reward dollars are not redeemed, we recognize other income upon expiration. In addition, we sell gift cards and record related deferred revenue at the time of the sale. We sell gift cards without expiration dates and we recognize revenue from a gift card upon redemption of the gift card. If a gift card is not redeemed, we recognize other income when the likelihood of its redemption becomes remote based on our historical redemption experience. We consider the likelihood of redemption to be remote after 36 months.

Sales returns allowance

We inspect returned items when they arrive at our processing facility. We refund the full cost of the merchandise returned and all original shipping charges if the returned item is defective or we or our fulfillment partners have made an error, such as shipping the wrong product.

If the return is not a result of a product defect or a fulfillment error and the customer initiates a return of an unopened item within 30 days of delivery, for most products we refund the full cost of the merchandise minus the original shipping charge and actual return shipping fees. However, we reduce refunds for returns initiated more than 30 days after delivery or that are received at our returns processing facility more than 45 days after initial delivery.

If our customer returns an item that has been opened or shows signs of wear, we issue a partial refund minus the original shipping charge and actual return shipping fees.

Revenue is recorded net of estimated returns. We record an allowance for returns based on current period revenues and historical returns experience. We analyze actual historical returns, current economic trends and changes in order volume and acceptance of our products when evaluating the adequacy of the sales returns allowance in any accounting period.

The allowance for returns was $13.2 million and $10.6 million at December 31, 2013 and 2012 respectively.

Valuation of inventories

Inventories, consisting of merchandise purchased for resale, are accounted for using a standard costing system which approximates the first-in-first-out ("FIFO") method of accounting, and are valued at the lower of cost or market. We write down our inventory for estimated obsolescence and to lower of cost or market value based upon assumptions about future demand and market conditions. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required. Once established, the original cost of the inventory less the related inventory allowance represents the new cost basis of such products. Reversal of the allowance is recognized only when the related inventory has been sold or scrapped.

Internal-use software and website development

Included in fixed assets is the capitalized cost of internal-use software and website development, including software used to upgrade and enhance our Website and processes supporting our business. We capitalize costs incurred during the

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application development stage of internal-use software and amortize these costs over the estimated useful life of two to three years. Costs incurred related to design or maintenance of internal-use software are expensed as incurred.
Accounting for income taxes
We are subject to taxation from federal, state and international jurisdictions. A significant amount of judgment is involved in preparing our provision for income taxes and the calculation of resulting deferred tax assets and liabilities.

We account for income taxes in accordance with ASC Topic 740, Income Taxes (“ASC 740”) which requires the asset and liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences between tax and financial reporting. Deferred tax assets and liabilities are measured using the currently enacted tax rates that apply to taxable income in effect for the years in which those tax assets are expected to be realized or settled. We use the with-and-without approach, disregarding indirect tax impacts, for determining the period in which tax benefits for excess share-based deductions are recognized. Net operating losses from prior years reduced federal and state income tax obligations to the extent that we did not have significant income taxes payable at December 31, 2013 or 2012.

Since inception, we determined that a valuation allowance should be recorded against all of our net deferred tax assets. This quarterly assessment required us to exercise significant judgment and make estimates about our ability to generate revenue, gross profit, operating income and taxable income in future periods. Due to strong operating results in the last two years, including eight consecutive quarters of taxable income, and increased confidence that we will continue to generate taxable income into the foreseeable future, our assessment regarding whether it is more likely than not that we will realize our deferred tax assets has changed. The result was the full release of the $79.7 million valuation allowance on our deferred tax assets. In reaching this conclusion we considered, among other things, our recent financial and operating results (three years of cumulative income, eight consecutive quarters of profitability and strong revenue growth). We gave the most significant weight in our evaluation to the objective, direct positive evidence related to our recent strong financial results, particularly our positive levels of pre-tax income. Historically, our pre-tax income and our taxable income have not varied by much other than one time tax accounting method changes and the anomaly of the 2013 $6.8 million civil penalty assessed in a legal matter. Except as otherwise disclosed, there are no known trends, events, transactions or other uncertainties that are expected to negatively impact the future levels of taxable income.

We performed multiple sensitivity analyses to address how potential changes in significant assumptions would impact our ability to generate the minimum amount of taxable income required. We will continue to monitor the need for a valuation allowance against our federal and state deferred tax assets quarterly, but at December 31, 2013 we believe it is more likely than not that these assets will be realized in future periods.

Accounting Standards Codification ("ASC") 740 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with GAAP. ASC 740 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. This statement also provides guidance on derecognition, classification, interest and penalties, accounting in the interim periods and disclosure.

The calculation of our tax liabilities is subject to legal and factual interpretation, judgment, and uncertainty in a multitude of jurisdictions. This includes addressing uncertainties in the application of complex tax regulations. We recognize liabilities for uncertain tax positions in the U.S. and other tax jurisdictions based on recognition and measurement criteria prescribed by ASC 740. The liabilities are periodically reviewed for their adequacy and appropriateness. Changes to our assumptions could cause us to find a revision of estimates appropriate. Such a change in measurement would result in the recognition of a tax benefit or an additional charge to the tax provision.

Tax laws and regulations themselves are subject to change as a result of changes in fiscal policy, changes in legislation, the evolution of regulations, and court rulings. We recognize potential liabilities for anticipated tax audit issues in the U.S. and other tax jurisdictions based on our estimate of whether, and the extent to which, additional taxes and interest will be due. We record an amount as an estimate of probable additional income tax liability at the largest amount that we determine is more likely than not, based upon the technical merits of the position, to be sustained upon audit by the relevant tax authority.

As of December 31, 2013, we were not under audit by any income tax authorities. Tax periods within the statutory period of limitations not previously audited are potentially open for examination by the tax authorities. Potential liabilities associated with these years will be resolved when an event occurs to warrant closure, primarily through the completion of audits by the tax jurisdictions and/or the expiration of the statutes of limitation. To the extent audits or other events result in a

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material adjustment to the accrued estimates, the effect would be recognized during the period of the event. We believe that an appropriate estimated liability has been established for potential exposures.

Our net unrecognized tax benefits are recorded as a liability in our consolidated balance sheets. To the extent interest and penalties would be assessed by taxing authorities of any underpayment of income taxes, such amounts are accrued and classified as a component of income tax expense on our consolidated statement of operations and comprehensive income (loss). Realization of the unrecognized tax benefits results in a favorable impact to the effective tax rate.

Impairment of long-lived assets

We review property and equipment and other long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable. Recoverability is measured by comparison of the assets' carrying amount to future undiscounted net cash flows the asset group is expected to generate. Cash flow forecasts are based on trends of historical performance and management's estimate of future performance, giving consideration to existing and anticipated competitive and economic conditions. If such asset group is considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds their fair values. There were no impairments to long-lived assets recorded during the years ended December 31, 2013, 2012 and 2011.

Valuation of goodwill

Goodwill is not amortized, but must be tested for impairment at least annually. When evaluating whether goodwill is impaired, we make a qualitative assessment to determine if it is more likely than not that its fair value is less than its carrying amount. If the qualitative assessment determines that it is more likely than not that its fair value is less than its carrying amount, we compare the fair value of the reporting unit to which the goodwill is assigned to its carrying amount. If the carrying amount exceeds its fair value, then the amount of the impairment loss must be measured. The impairment loss, if any, is calculated by comparing the implied fair value of the goodwill to its carrying amount. In calculating the implied fair value of goodwill, the fair value of the reporting unit is allocated to the other assets and liabilities within the reporting unit based on estimated fair value. The excess of the fair value of a reporting unit over the amount allocated to its other assets and liabilities is the implied fair value of goodwill. An impairment loss is recognized when the carrying amount of goodwill exceeds its implied fair value.

We test for impairment of goodwill in the fourth quarter or when we deem that a triggering event has occurred. Goodwill totaled $2.8 million at December 31, 2013 and 2012. There were no impairments to goodwill recorded during the years ended December 31, 2013, 2012 and 2011.

Accounting pronouncements issued not yet adopted

See Item 15 of Part IV, "Financial Statements"—Note 2—"Accounting Policies" subheading "Accounting Pronouncements Issued Not Yet Adopted."

Comparison of Years Ended December 31, 2013 and 2012

Executive Commentary

This executive commentary is intended to provide investors with a view of our business through the eyes of our management. As an executive commentary, it necessarily focuses on selected aspects of our business. This executive commentary is intended as a supplement to, but not a substitute for, the more detailed discussion of our business included elsewhere herein. Investors are cautioned to read our entire "Management's Discussion and Analysis of Financial Condition and Results of Operations," as well as our interim and audited financial statements, and the discussion of our business and risk factors and other information included elsewhere or incorporated in this report. This executive commentary includes forward-looking statements, and investors are cautioned to read the "Special Note Regarding Forward-Looking Statements" at the beginning of Item 2, "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Revenues in 2013 increased 19% compared to 2012. The growth in revenue was primarily due to a 17% increase in average order size, from $135 to $158, coupled with a 2% increase in orders. The increase in average order size is largely due to a sales mix shift into the home and garden category. Although the trend towards our home and garden category has accelerated in recent years, we do not expect the sales mix shift to continue to increase at the same rate in 2014.

Gross profit in 2013 increased 25% compared to 2012 primarily as a result of that revenue growth and a shift in product sales mix into higher margin home and garden products. Approximately $37.0 million of the $49.2 million increase in gross profit was due to higher revenue, and $12.2 million due to the improvement in gross margin percentage. The increase in gross margin was primarily due to the sales mix shift referenced above.

Sales and marketing expenses as a percentage of revenue increased from 5.8% in 2012 to 7.0% for 2013, primarily due to increased spending in the sponsored search marketing channel due to a higher proportion of our revenue coming through that channel. In addition, during the last several weeks of December 2013, we increased our marketing spending as a result of softer sales observed during this period. We continued to refine our marketing strategies in the first quarter of 2014.

In late 2012, Google, Inc. (“Google”) discontinued providing its free Google Base product listing service to retailers and instead offered retailers a new fee based product listing service. In addition, during Q3 2013, Google tested and later implemented changes to its search engine algorithms, which reduced our ranking in certain Google search results during some periods. While we worked on adapting to Google's changes, we emphasized other marketing channels, such as sponsored search, which generated revenue growth but with higher associated marketing expenses as a percentage of revenue than was the case for revenue coming from Google Base and natural search.

Technology expense in 2013 increased $6.3 million compared to 2012, primarily due to an increase in staff-related costs partially offset by a decrease in depreciation.

We continue to seek opportunities for growth in our business, including expanding our international sales and our distribution capabilities. We also intend to begin to broker insurance products, and offer consumer financing products through a third party, to our customers in 2014. As a result, we expect to continue to increase our technology expenses to support these initiatives.

General and administrative expense in 2013 increased $10.9 million compared to 2012, primarily due to $10.1 million of increased activity on legal matters, including our defense of a case brought by district attorneys in eight California counties, and for civil penalties assessed in an adverse judgment received in the case (which we intend to appeal).

Provision (benefit) for income taxes in 2013 was ($72.2) million compared to $485,000 in 2012. The large income tax benefit in 2013 was due to a $79.7 million deferred tax asset valuation release in 2013 after concluding that it was more likely than not that we will realize our deferred tax assets.

The balance of our Management’s Discussion and Analysis of Financial Condition and Results of Operations provides further information about the matters discussed above and other important matters affecting our business.

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## Results of Operations

The following table sets forth our results of operations expressed as a percentage of total net revenue for the years ended December 31, 2013, 2012 and 2011:

| | Year ended December 31 | | |
|---|---|---|---|
| | 2013 | 2012 | 2011 |
| | (as a percentage of total revenue) | | |
| Revenue, net | | | |
| Direct | 12.0 % | 14.1 % | 15.5 % |
| Fulfillment partner | 88.0 | 85.9 | 84.5 |
| Total net revenue | 100.0 | 100.0 | 100.0 |
| Cost of goods sold | | | |
| Direct | 10.4 | 12.8 | 14.2 |
| Fulfillment partner | 70.6 | 69.2 | 68.8 |
| Total cost of goods sold | 81.0 | 81.9 | 83.0 |
| Gross profit | 19.0 | 18.1 | 17.0 |
| Operating expenses: | | | |
| Sales and marketing | 7.0 | 5.8 | 5.9 |
| Technology | 5.5 | 6.0 | 6.4 |
| General and administrative | 5.2 | 5.2 | 6.4 |
| Restructuring | — | — | — |
| Total operating expenses | 17.7 | 17.0 | 18.7 |
| Operating income (loss) | 1.3 | 1.1 | (1.7 ) |
| Interest income | — | — | — |
| Interest expense | — | (0.1 ) | (0.2 ) |
| Other income, net | — | 0.3 | — |
| Net income (loss) before income taxes | 1.3 | 1.3 | (1.9 ) |
| Provision (benefit) for income taxes | (5.5 ) | — | — |
| Net income (loss) | 6.8 % | 1.3 % | (1.9 )% |

## Revenue

The following table reflects our net revenue for the years ended December 31, 2013 and 2012:

| | Year ended December 31, | | | |
|---|---|---|---|---|
| | 2013 | 2012 | $ Change | % Change |
| Revenue, net | | | | |
| Direct | $156,032 | $155,516 | $516 | 0.3 % |
| Fulfillment partner | 1,148,185 | 943,773 | 204,412 | 21.7 % |
| Total revenue, net | $1,304,217 | $1,099,289 | $204,928 | 18.6 % |

The primary reason for increased total net revenue for the year ended December 31, 2013 was an increase of 17% in average order size, from $135 to $158, coupled with a 2% increase in orders. The increase in average order size is largely due to a sales mix shift into home and garden products.

The primary reason for increased direct revenue for the year ended December 31, 2013 was a continued shift in sales mix into our home and garden products, partially offset by a decrease in sales of clothing and shoes due to our shift from a direct inventory-based model to a fulfillment partner-based model to reduce exposure from seasonal inventory and mark downs.

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The primary reason for the increase in fulfillment partner revenue for the year ended December 31, 2013 was an increase in sales of home and garden products.

The shift of business from direct to fulfillment partner (or vice versa) is an economic decision based on the economics of each particular product offering at the time and we generally do not have particular goals for an “appropriate” mix or percentage for the size of either. We believe that the mix of the business between direct and fulfillment partner is consistent with our strategic objectives for our business model in the current economic environment and we do not currently foresee any material shifts in mix.

We continue to seek increased participation in our Club O loyalty program as revenue and average order size of customers with paid Club O memberships is larger than from other customers. For additional information regarding our Club O loyalty program see Item 15 of Part IV, "Financial Statements"—Note 2—"Accounting Policies” under the section “Club O loyalty program.”

Gross profit and gross margin

Our overall gross margins fluctuate based on our sales volume mix between our direct business and fulfillment partner business; changes in supplier cost and / or sales price, including competitive pricing; inventory management decisions within the direct business; sales coupons and promotions; product mix of sales; and operational and fulfillment costs.

The following table reflects our net revenues, cost of goods sold and gross profit for the years ended December 31, 2013 and 2012 (in thousands):

| | Year ended December 31, | | | |
|---|---|---|---|---|
| | 2013 | 2012 | $ Change | % Change |
| Revenue, net | | | | |
| Direct | $156,032 | $155,516 | $516 | 0.3 % |
| Fulfillment partner | 1,148,185 | 943,773 | 204,412 | 21.7 % |
| Total net revenues | 1,304,217 | 1,099,289 | 204,928 | 18.6 % |
| Cost of goods sold | | | | |
| Direct | 136,282 | 140,536 | (4,254) | (3.0)% |
| Fulfillment partner | 920,275 | 760,323 | 159,952 | 21.0 % |
| Total cost of goods sold | 1,056,557 | 900,859 | 155,698 | 17.3 % |
| Gross Profit | | | | |
| Direct | 19,750 | 14,980 | 4,770 | 31.8 % |
| Fulfillment partner | 227,910 | 183,450 | 44,460 | 24.2 % |
| Total gross profit | $247,660 | $198,430 | $49,230 | 24.8 % |

Gross margins for the past eight quarterly periods and years ending December 31, 2013 and 2012 were:

| | Q1 2013 | Q2 2013 | Q3 2013 | Q4 2013 | FY 2013 |
|---|---|---|---|---|---|
| Direct | 11.4 % | 12.2 % | 13.7 % | 13.4 % | 12.7 % |
| Fulfillment Partner | 20.0 % | 20.8 % | 20.4 % | 18.6 % | 19.8 % |
| Combined | 18.9 % | 19.7 % | 19.6 % | 18.0 % | 19.0 % |
| | Q1 2012 | Q2 2012 | Q3 2012 | Q4 2012 | FY 2012 |
| Direct | 8.0 % | 8.3 % | 10.3 % | 11.5 % | 9.6 % |
| Fulfillment Partner | 20.0 % | 19.6 % | 19.4 % | 18.9 % | 19.4 % |
| Combined | 18.1 % | 18.0 % | 18.2 % | 17.9 % | 18.1 % |

The increase in direct gross margin for the year ended December 31, 2013 when compared to the same period in 2012 is primarily due to a shift in sales mix into higher margin home and garden products, lower warehousing costs, partially offset by higher freight costs.

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The increase in fulfillment partner gross margin for the year ended December 31, 2013 is primarily due to higher revenue and a shift in product sales mix into higher margin home and garden products.

Cost of goods sold includes stock-based compensation expense of $154,000 and $272,000 for the years ended December 31, 2013 and 2012, respectively.

Fulfillment costs

Fulfillment costs include all warehousing costs, including fixed overhead and variable handling costs (excluding packaging costs), as well as credit card fees and customer service costs, all of which we include as costs in calculating gross margin. We believe that some companies in our industry, including some of our competitors, account for fulfillment costs within operating expenses, and therefore exclude fulfillment costs from gross margin. As a result, our gross margin may not be directly comparable to others in our industry.

The following table has been included to provide investors additional information regarding our classification of fulfillment costs, gross profit and margin, thus enabling investors to better compare our gross margin with others in our industry (in thousands):

| | Year ended December 31, | | | |
|---|---|---|---|---|
| | 2013 | | 2012 | |
| Total revenue, net | $1,304,217 | 100% | $1,099,289 | 100% |
| Cost of goods sold | | | | |
| Product costs and other cost of goods sold | 999,519 | 77% | 848,842 | 77% |
| Fulfillment and related costs | 57,038 | 4% | 52,017 | 5% |
| Total cost of goods sold | 1,056,557 | 81% | 900,859 | 82% |
| Gross profit | $247,660 | 19% | $198,430 | 18% |

Fulfillment costs as a percentage of sales may vary due to several factors, such as our ability to manage costs at our warehouses, significant changes in the number of units received and fulfilled, the extent to which we use third party fulfillment services and warehouses, and our ability to effectively manage customer service costs and credit card fees. Fulfillment and related costs remained relatively flat during the year ended December 31, 2013 as compared to 2012.

See “Gross profit and gross margin” above for additional discussion.

Operating expenses

Sales and marketing expenses

We use a variety of methods to target our consumer audience, including online campaigns, such as advertising through keywords, product listing ads, display ads, search engines, affiliate marketing programs, social coupon websites, portals, banners, e-mail, direct mail and viral and social media campaigns. We also do brand advertising through television, radio, and print ads.

The following table reflects our sales and marketing expenses for the years ended December 31, 2013 and 2012 (in thousands):

| | Year ended December 31, | | | |
|---|---|---|---|---|
| | 2013 | 2012 | $ Change | % Change |
| Sales and marketing expenses | $91,609 | $63,467 | $28,142 | 44.3 % |
| Sales and marketing expenses as a percent of net revenues | 7.0 % | 5.8 % | | |

Sales and marketing expenses as a percentage of revenue increased from 5.8% to 7.0% for the year ended December 31, 2013 as compared to the same period in 2012, primarily due to increased expenditures in the sponsored search marketing channel due to a higher proportion of our revenue coming through that channel.

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In late 2012, Google, Inc. ("Google") discontinued providing its free Google Base product listing service to retailers and instead offered retailers a new fee based product listing service. In addition, during Q3 2013, Google tested and later implemented changes to its search engine algorithms, which reduced our ranking in certain Google search results during some periods. While we worked on adapting to Google's changes, we emphasized other marketing channels, such as sponsored search, which generated revenue growth but with higher associated marketing expenses as a percentage of revenue than was the case for revenue coming from Google Base and natural search.

Sales and marketing expenses include stock-based compensation expense of $167,000 and $318,000 for the years ended December 31, 2013 and 2012, respectively.

Costs associated with our discounted shipping and other promotions, such as coupons, are not included in marketing expense. Rather, they are accounted for as a reduction of revenue and therefore affect sales and gross margin. We consider discounted shipping and other promotions, such as our policy of free shipping on orders over $50 introduced in early January 2013, as an effective marketing tool, and intend to continue to offer them as we deem appropriate as part of our overall marketing plan.

Technology expenses

We seek to invest efficiently in technology, including web services, customer support solutions, website search, expansion of new and existing product categories, and in investments in technology to enhance the customer experience, improve our process efficiency and support our logistics infrastructure. We expect to continue to increase our technology expenses to support these initiatives.

The following table reflects our technology expenses for the years ended December 31, 2013 and 2012 (in thousands):

| | Year ended December 31, 2013 | Year ended December 31, 2012 | $ Change | % Change |
|---|---|---|---|---|
| Technology expenses | $71,788 | $65,467 | $6,321 | 9.7 % |
| Technology expenses as a percent of net revenues | 5.5 % | 6.0 % | | |

The $6.3 million increase for the year ended December 31, 2013 is primarily due to an increase in staff related costs partially offset by a decrease in depreciation.

Technology expenses include stock-based compensation expense of $352,000 and $799,000 for the years ended December 31, 2013 and 2012, respectively.

General and administrative expenses

The following table reflects our general and administrative expenses for the years ended December 31, 2013 and 2012 (in thousands):

| | Year ended December 31, 2013 | Year ended December 31, 2012 | $ Change | % Change |
|---|---|---|---|---|
| General and administrative expenses | $68,169 | $57,259 | $10,910 | 19.1 % |
| General and administrative expenses as a percent of net revenues | 5.2 % | 5.2 % | | |

The $10.9 million increase in general and administrative expenses ("G&A") for the year ended December 31, 2013 is primarily due to a $10.1 million increase in legal costs due to an increase in activity on legal matters, including our defense of a case brought by district attorneys in eight California counties, and for civil penalties assessed in an adverse judgment received in the case (which we intend to appeal).

G&A expenses include stock-based compensation expense of approximately $2.6 million and $2.1 million for the years ended December 31, 2013 and 2012, respectively.

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Restructuring

During the year ended December 31, 2013 we reversed approximately $471,000 of lease termination costs primarily due to changes in our restructuring accrual as a result of our reoccupation of a portion of formerly restructured office space. We incurred $76,000 of restructuring charges during the year ended December 31, 2012 due to changes in the estimate of sublease income as a result of our entering into a new sublease agreement and ceasing the use of some of our office facilities.

Depreciation expense

Depreciation expense is classified within the corresponding operating expense categories on the consolidated statements of operations as follows (in thousands):

| | Year ended December 31, | |
|---|---|---|
| | 2013 | 2012 |
| Cost of goods sold - direct | $380 | $470 |
| Technology | 12,917 | 14,177 |
| General and administrative | 1,225 | 1,362 |
| Total depreciation and amortization, including internal-use software and website development | $14,522 | $16,009 |

Non-operating income (expense)

Interest income

Interest income is primarily derived from the investment of our cash in cash equivalents and short-term investments. Interest income for the years ended December 31, 2013 and 2012 totaled $127,000 and $116,000, respectively.

Interest expense

Interest expense is primarily related to interest incurred on line of credit and our capital leases. Interest expense for the years ended December 31, 2013 and 2012 totaled $113,000 and $809,000, respectively. The decrease is primarily due to our repayment of the $17.0 million in advances under the U.S. Bank Financing Agreement in November 2012.

Other income (expense), net

Other income (expense), net for the year ended December 31, 2013 decreased to $(235,000) from $3.7 million in 2012 primarily related to $1.7 million of decreased Club O rewards breakage due to fewer expiring promotional memberships and $1.5 million of losses on our investment in precious metals.

Income taxes

Our benefit for income taxes for the year ended December 31, 2013 of $72.2 million is primarily due to our decision to release our deferred tax asset valuation allowance of $79.7 million at December 31, 2013. In our decision to release the valuation allowance we concluded that the positive evidence outweighed the negative evidence and that it was more likely than not that all of our federal and state deferred tax assets will be realized. See Item 15 of Part IV, "Financial Statements"—Note 20—"Income Taxes". Our provision for income taxes for the year ended December 31, 2012 of $485,000 was for federal alternative minimum tax and certain income tax uncertainties, including interest and penalties.

Seasonality

Based upon our historical experience, revenue typically increases during the fourth quarter because of the holiday retail season and gross margin decreases due to increased sales of certain lower margin products, such as electronics. The actual quarterly results for each quarter could differ materially depending upon consumer preferences, availability of product and competition, among other risks and uncertainties. Accordingly, there can be no assurances that seasonal variations will not materially affect our results of operations in the future.

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The following table reflects our total net revenues for each of the quarters in 2013, 2012 and 2011 (in thousands):

| | First Quarter | Second Quarter | Third Quarter | Fourth Quarter |
|---|---|---|---|---|
| 2013 | $311,994 | $293,204 | $301,426 | $397,593 |
| 2012 | $262,367 | $239,536 | $255,352 | $342,034 |
| 2011 | $265,470 | $234,992 | $239,738 | $314,077 |

Comparison of Years Ended December 31, 2012 and 2011

Executive Commentary

This executive commentary is intended to provide investors with a view of our business through the eyes of our management. As an executive commentary, it necessarily focuses on selected aspects of our business. This executive commentary is intended as a supplement to, but not a substitute for, the more detailed discussion of our business included elsewhere herein. Investors are cautioned to read our entire "Management's Discussion and Analysis of Financial Condition and Results of Operations", as well as our interim and audited financial statements, and the discussion of our business and risk factors and other information included elsewhere or incorporated in this report. This executive commentary includes forward-looking statements, and investors are cautioned to read the "Special Note Regarding Forward-Looking Statements" at the beginning of this Form 10-K.

We had positive net income in each of the four fiscal quarters of this year. 2012 net income was $14.7 million versus a net loss of $19.4 million in 2011, a $34.1 million, or $1.46 per diluted share, improvement. The year-over-year improvement in net income resulted primarily from revenue growth of 4%, a 110 basis point improvement in gross margin and $10.5 million of lower general and administrative expenses.

Revenues in 2012 increased 4% compared to 2011, largely due to increasing growth rates in the second half of the year; we posted 9% revenue growth in Q4 2012 compared to Q4 2011. The primary reason for the improvement this year was an increase of 10% in the average order size, from $123 to $135, which is largely due to a sales mix shift into the home and garden category. This increase more than offset the impact of a 3% decrease in customer orders due to lower conversion rates.

Gross profit in 2012 increased 11% compared to 2011 primarily as a result of 4% revenue growth and a 110 basis point expansion in gross margin. Approximately $8.1 million of the $19.3 million increase in gross profit was due to higher revenue growth, while the other $11.2 million was due to the improvement in gross margin percentage. The increase in gross margin was primarily due to the sales mix shift referenced above. While we spent $1.7 million more in sales and marketing in 2012, as a percentage of revenue, sales and marketing expenses declined to 5.8% from 5.9% last year. The result of higher gross profit and a decrease in marketing spend was 15% growth in Contribution (see "Non-GAAP Financial Measures" below for a reconciliation of Contribution to Gross Profit) in 2012, and a 120 basis point improvement in Contribution margin which increased to 12.3% for 2012.

Technology expense in 2012 decreased $1.6 million compared to 2011, primarily due to decreases in compensation and recruiting-related costs from lower headcount earlier in the year. However, technology expenses increased during Q4 2012 following investments we made in technology-related initiatives and personnel. General and administrative expenses in 2012 decreased $10.5 million compared to 2011, primarily due to lower legal fees.

Our fulfillment partner business continued to make up a large percentage of our total revenues, expanding to nearly 86% of total net revenue in 2012. Our decision to shift sales from the Apparel & Shoes category away from the direct business and into the fulfillment partner business contributed to this shift in 2012. We converted revenues into cash on average five days before we pay our suppliers. This reduced the capital requirements needed to operate our business, and helped us to generate positive operating cash flows on a trailing twelve month basis for the past several years.

We ended the year with $93.5 million of cash and cash equivalents compared to $97.0 million at December 31, 2011, and working capital improved to $7.5 million from $(14.1) million for the same periods, respectively. In November 2012, we fully paid the $17.0 million in advances under the U.S. Bank Financing Agreement and the facility expired at the end of 2012. In December 2012, we entered into a $3.0 million credit agreement with U.S. Bank to provide a line of credit to support letters of credit.

The balance of our Management's Discussion and Analysis of Financial Condition and Results of Operations provides further information about the matters discussed above and other important matters affecting our business.

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Results of Operations

The following table sets forth our results of operations expressed as a percentage of total net revenue for 2012, 2011 and 2010:

| | Year ended December 31 | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| | (as a percentage of total revenue) | | |
| Revenue, net | | | |
| Direct | 14.1 % | 15.5 % | 19.2 % |
| Fulfillment partner | 85.9 | 84.5 | 80.8 |
| Total net revenue | 100.0 | 100.0 | 100.0 |
| Cost of goods sold | | | |
| Direct | 12.8 | 14.2 | 17.2 |
| Fulfillment partner | 69.2 | 68.8 | 65.4 |
| Total cost of goods sold | 81.9 | 83.0 | 82.6 |
| Gross profit | 18.1 | 17.0 | 17.4 |
| Operating expenses: | | | |
| Sales and marketing | 5.8 | 5.9 | 5.6 |
| Technology | 6.0 | 6.4 | 5.3 |
| General and administrative | 5.2 | 6.4 | 5.1 |
| Restructuring | — | — | (0.1) |
| Total operating expenses | 17.0 | 18.7 | 16.0 |
| Operating income (loss) | 1.1 | (1.7) | 1.4 |
| Interest income | — | — | — |
| Interest expense | (0.1) | (0.2) | (0.3) |
| Other income (expense), net | 0.3 | — | 0.2 |
| Income (loss) before income taxes | 1.3 | (1.9) | 1.3 |
| Provision (benefit) for income taxes | — | — | — |
| Net income (loss) | 1.3 % | (1.9 )% | 1.3 % |

Revenue

The following table reflects our net revenue for the years ended December 31, 2012 and 2011 (in thousands):

| | Year ended December 31, | | | |
|---|---|---|---|---|
| | 2012 | 2011 | $ Change | % Change |
| Revenue, net | | | | |
| Direct | $155,516 | $163,609 | $(8,093) | (4.9 )% |
| Fulfillment partner | 943,773 | 890,668 | 53,105 | 6.0 % |
| Total revenue, net | $1,099,289 | $1,054,277 | $45,012 | 4.3 % |

The primary reason for the increase in total revenue for the year ended December 31, 2012 was an increase of 10% in average order size, from $123 to $135, primarily due to a sales mix shift into more home and garden products, partially offset by a decrease of 3% in customer orders due to lower conversion rates compared to last year.

The primary reason for the decrease in direct revenue for the year ended December 31, 2012 was a shift in sales mix, particularly in Apparel and Shoes, from a direct inventory-based model to a fulfillment partner-based model to reduce exposure from seasonal inventory and mark downs; partially offset by an increase in sales of home and garden products.

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The primary reason for the increase in fulfillment partner revenue for the year ended December 31, 2012 was an increase in sales of home and garden products; partially offset by decreases in sales of electronics, jewelry and watches and books and media.

Gross profit

Our overall gross margins fluctuate based on our sales volume mix between our direct business and fulfillment partner business; changes in supplier cost and / or sales price, including competitive pricing; inventory management decisions within the direct business; sales coupons and promotions; product mix of sales; and operational and fulfillment costs. The following table reflects our net revenues, cost of goods sold and gross profit for the year ended December 31, 2012 and 2011 (in thousands):

| | Year ended December 31, | | | |
|---|---|---|---|---|
| | 2012 | 2011 | $ Change | % Change |
| Revenue, net | | | | |
| Direct | $155,516 | $163,609 | $(8,093) | (4.9)% |
| Fulfillment partner | 943,773 | 890,668 | 53,105 | 6.0% |
| Total net revenues | $1,099,289 | $1,054,277 | $45,012 | 4.3% |
| Cost of goods sold | | | | |
| Direct | $140,536 | $149,660 | $(9,124) | (6.1)% |
| Fulfillment partner | 760,323 | 725,529 | 34,794 | 4.8% |
| Total cost of goods sold | $900,859 | $875,189 | $25,670 | 2.9% |
| Gross Profit | | | | |
| Direct | $14,980 | $13,949 | $1,031 | 7.4% |
| Fulfillment partner | 183,450 | 165,139 | 18,311 | 11.1% |
| Total gross profit | $198,430 | $179,088 | $19,342 | 10.8% |

Gross margins for the past eight quarterly periods and years ending December 31, 2012 and 2011 were:

| | Q1 2012 | Q2 2012 | Q3 2012 | Q4 2012 | FY 2012 |
|---|---|---|---|---|---|
| Direct | 8.0% | 8.3% | 10.3% | 11.5% | 9.6% |
| Fulfillment Partner | 20.0% | 19.6% | 19.4% | 18.9% | 19.4% |
| Combined | 18.1% | 18.0% | 18.2% | 17.9% | 18.1% |
| | Q1 2011 | Q2 2011 | Q3 2011 | Q4 2011 | FY 2011 |
| Direct | 10.7% | 9.6% | 6.6% | 7.0% | 8.5% |
| Fulfillment Partner | 20.7% | 18.1% | 17.6% | 17.8% | 18.5% |
| Combined | 18.9% | 16.9% | 16.0% | 16.2% | 17.0% |

The 110 and 90 basis point increases in direct and fulfillment gross margins, respectively, for the year ended December 31, 2012 when compared to the same period in 2011 are primarily due to shifts in the sales mix into higher margin home and garden products and lower credit card fees, partially offset by higher returns-related and freight costs.

The other factors described above, such as coupons, promotions and operational costs did not have a significant impact on the change in gross margin.

Cost of goods sold includes stock-based compensation expense of $272,000 and $193,000 for the years ended December 31, 2012 and 2011, respectively.

See "Executive Commentary" above for additional discussion.

Fulfillment costs

Fulfillment costs include all warehousing costs, including fixed overhead and variable handling costs (excluding packaging costs), as well as credit card fees and customer service costs, all of which we include as costs in calculating gross margin. We believe that some companies in our industry, including some of our competitors, account for fulfillment costs within operating expenses, and therefore exclude fulfillment costs from gross margin. As a result, our gross margin may not be directly comparable to others in our industry.

The following table has been included to provide investors additional information regarding our classification of fulfillment costs, gross profit and margin, thus enabling investors to better compare our gross margin with others in our industry (in thousands):

| | Year ended December 31, | | | | | |
|---|---|---|---|---|---|---|
| | 2012 | | | 2011 | | |
| Total net revenue | $1,099,289 | 100 | % | $1,054,277 | 100 | % |
| Cost of goods sold | | | | | | |
| Product costs and other cost of goods sold | 848,842 | 77 | % | 821,739 | 78 | % |
| Fulfillment and related costs | 52,017 | 5 | % | 53,450 | 5 | % |
| Total cost of goods sold | 900,859 | 82 | % | 875,189 | 83 | % |
| Gross profit | $198,430 | 18 | % | $179,088 | 17 | % |

Fulfillment costs as a percentage of sales may vary due to several factors, such as our ability to manage costs at our warehouses, significant changes in the number of units received and fulfilled, the extent to which we use third party fulfillment services and warehouses, and our ability to effectively manage customer service costs and credit card fees. There were no significant changes in our fulfillment and related costs as a percentage of net revenue during the year ended December 31, 2012.

See "Gross profit" above for additional discussion.

Operating expenses

Sales and marketing expenses

We advertise through a number of targeted online marketing channels, such as sponsored search, affiliate marketing, portal advertising, e-mail campaigns, and other initiatives. We also use nationwide television, print and radio advertising campaigns to promote sales.

The following table reflects our sales and marketing expenses for the years ended December 31, 2012 and 2011 (in thousands):

| | Year ended December 31, | | | | | |
|---|---|---|---|---|---|---|
| | 2012 | | 2011 | | $ Change | % Change | |
| Sales and marketing expenses | $63,467 | | $61,813 | | $1,654 | 2.7 | % |
| Sales and marketing expenses as a percent of net revenues | 5.8 | % | 5.9 | % | | | |

Sales and marketing expenses as a percentage of revenue decreased slightly for the year ended December 31, 2012, when compared to the same period in 2011.

Sales and marketing expenses include stock-based compensation expense of $318,000 and $377,000 for the years ended December 31, 2012 and 2011, respectively.

Costs associated with our discounted shipping and other promotions, such as coupons, are not included in marketing expense. Rather they are accounted for as a reduction of revenue and therefore affect sales and gross margin. We consider discounted shipping and other promotions, such as our new policy of free shipping on orders over $50 introduced in early January 2013, as an effective marketing tool, and intend to continue to offer them as we deem appropriate as part of our overall marketing plan.

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Technology expenses

We seek to invest efficiently in technology, including web services, customer support solutions and website search, and in expansion of new and existing product categories, and in investments in technology to enhance the customer experience, improve our process efficiency and support our logistics infrastructure.

The following table reflects our technology expenses for the years ended December 31, 2012 and 2011 (in thousands):

| | Year ended December 31, 2012 | 2011 | $ Change | % Change |
|---|---|---|---|---|
| Technology expenses | $65,467 | $67,043 | $(1,576) | (2.4)% |
| Technology expenses as a percent of net revenues | 6.0% | 6.4% | | |

The decrease for the year ended December 31, 2012 is primarily due to decreases in compensation and recruiting-related costs primarily from lower headcount earlier in the year; partially offset by an increase in third party technology services. Technology expenses in Q4 2012 increased by $2.2 million compared to Q4 2011 largely due to investments made in new personnel and third party technology services.

Technology expenses include stock-based compensation expense of $799,000 and $628,000 for the years ended December 31, 2012 and 2011, respectively.

General and administrative expenses

The following table reflects our general and administrative expenses for the years ended December 31, 2012 and 2011 (in thousands):

| | Year ended December 31, 2012 | 2011 | $ Change | % Change |
|---|---|---|---|---|
| General and administrative expenses | $57,259 | $67,766 | $(10,507) | (15.5)% |
| General and administrative expenses as a percent of net revenues | 5.2% | 6.4% | | |

The decrease in general and administrative expenses for the year ended December 31, 2012 is primarily due to a decrease in legal fees.

General and administrative expenses include stock-based compensation expense of approximately $2.1 million and $1.9 million for the years ended December 31, 2012 and 2011, respectively.

Restructuring

We incurred $76,000 of restructuring charges during the year ended December 31, 2012 due to ceasing the use of some of our office facilities, changes in our estimate of sublease income as a result of our entering into a new sublease agreement and termination of an existing sublease. There were no restructuring charges or reversals during the year ended December 31, 2011.

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Depreciation expense

Depreciation expense is classified within the corresponding operating expense categories on the consolidated statements of operations as follows (in thousands):

| | Year ended December 31, | |
|---|---|---|
| | 2012 | 2011 |
| Cost of goods sold—direct | $470 | $714 |
| Technology | 14,177 | 14,433 |
| General and administrative | 1,362 | 1,203 |
| Total depreciation and amortization, including internal-use software and website development | $16,009 | $16,350 |

Non-operating income (expense)

Interest income

Interest income is primarily derived from the investment of our cash in cash and cash equivalents. Interest income for the years ended December 31, 2012 and 2011 totaled $116,000 and $161,000, respectively.

Interest expense

Interest expense is primarily related to interest incurred on our Senior Notes, finance obligations, line of credit and our capital leases. Interest expense for the years ended December 31, 2012 and 2011 totaled $809,000 and $2.5 million, respectively. The decrease in interest expense is primarily a result of extinguishments of our Senior Notes and finance obligations in 2011, partially offset by an increase in interest expense on our line of credit.

Other income, net

Other income, net for the years ended December 31, 2012 and 2011 totaled $3.7 million and $278,000, respectively. The increase was primarily due to an increase in Club O rewards breakage due to expiring promotional memberships. Additionally, 2011 included a $1.2 million loss on early retirement of our finance obligations resulting from a prepayment premium. There were no losses on early retirement of debt in 2012.

Income taxes

Our provision (benefit) for income taxes for the years ended December 31, 2012 and 2011 of $485,000 and ($142,000) is for federal alternative minimum tax and certain income tax uncertainties, including interest and penalties. As of December 31, 2012 and 2011 we had federal net operating loss carryforwards of approximately $174.1 million and $192.5 million, respectively, and state net operating loss carryforwards of approximately $151.6 million and $176.1 million, respectively, which may be used to offset future taxable income. As of December 31, 2012 and 2011 we had a full valuation allowance against our deferred tax assets after concluding that it was not more likely than not that we would realize our deferred tax assets.

Liquidity and Capital Resources

Current sources of liquidity

While we believe that the cash and cash equivalents currently on hand and expected cash flows from future operations will be sufficient to continue operations for at least the next twelve months; we may require additional financing. Although we may attempt to obtain additional financing, there can be no assurance that we will be able to do so. There can be no assurance that if additional financing is necessary it will be available, or, if available, that such financing can be obtained on satisfactory terms. Our failure to generate sufficient revenues or profits or to obtain additional financing or raise additional capital could have a material adverse effect on our operations and on our ability to achieve our intended business objectives. Any projections of future cash needs and cash flows are subject to substantial uncertainty.

Our principal sources of liquidity are cash flows generated from operations, and our existing cash and cash equivalents. At December 31, 2013, our only available credit facility was a $3.0 million facility solely to support letters of credit. At December 31, 2013, we had cash and cash equivalents of $148.7 million.

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Cash flow information is as follows (in thousands):

| | Year ended December 31, 2013 | 2012 |
|---|---|---|
| Cash provided by (used in): | | |
| Operating activities | $83,645 | $28,145 |
| Investing activities | (26,000) | (13,764) |
| Financing activities | (2,527) | (17,819) |

Free Cash Flow

"Free Cash Flow" (a non-GAAP measure) for the years ended December 31, 2013 and 2012, was $65.6 and $15.7 million, respectively. See "Non-GAAP Financial Measures" below for a reconciliation of Free Cash Flow to net cash provided by operating activities.

Cash flows from operating activities

For the years ended December 31, 2013 and 2012, our operating activities resulted in net cash inflows of $83.6 million and $28.1 million, respectively.

Cash received from customers generally corresponds to our net revenues as our customers primarily use credit cards to buy from us causing our receivables from these sales transactions to settle quickly. We have payment terms with our fulfillment partners that generally extend beyond the amount of time necessary to collect proceeds from our customers. As a result, following our typically seasonally strong fourth quarter sales, at December 31 of each year, our cash, cash equivalents and accounts payable balances normally reach their highest level (other than as a result of cash flows provided by or used in investing and financing activities). However, our accounts payable balance normally declines during the first three months following year-end, which normally results in a decline in our cash and cash equivalents balances from the year-end balance. The seasonality of our business causes payables and accruals to grow significantly in the fourth quarter, and then decrease in the first quarter when they are typically paid.

The $83.6 million of net cash provided by operating activities during the year ended December 31, 2013 was primarily from an increase in accounts payable and accrued liabilities of $28.2 million and $18.0 million, respectively. Accounts payable increased due to increased sales and in part due to a change in the timing of key holiday sales during Q4. In 2013, the holiday sales season began later than in 2012, and as a result some of our payments to our suppliers for holiday sales were due in January rather than in December. Accrued liabilities increased due to the timing of some invoices outstanding at year-end 2013 as compared to 2012, in particular, accruals for marketing expenses and legal matters increased. Other reasons for the increase in net cash provided by operating activities were income before taxes of $16.3 million and non-cash depreciation and amortization expense of $14.5 million.

The $28.1 million of net cash provided by operating activities during the year ended December 31, 2012 was primarily due to net income of $14.7 million, non-cash depreciation, amortization and stock compensation expense of $19.5 million, and an increase in deferred revenue of $10.4 million primarily due to strong sales growth at the end of year and an increase in the amount of orders sold but not yet delivered to customers due to shipping holidays near year-end, partially offset by a decrease in accounts payable of $7.9 million, an increase in accounts receivable of $5.8 million and an increase in inventory of $3.5 million primarily for home and garden products.

Cash flows from investing activities

Cash provided by investing activities primarily corresponds with purchases, sales, and maturities of marketable securities, investments in precious metals and cash expenditures for fixed assets, including internal-use software and website development costs. For the year ended December 31, 2013, investing activities resulted in net cash outflows of $26.0 million, primarily from expenditures for fixed assets of $18.1 million and investments in precious metals of $8.1 million. For the year ended December 31, 2012 investing activities resulted in net cash outflows of $13.8 million, resulting primarily from expenditures for fixed assets.

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Cash flows from financing activities

For the years ended December 31, 2013 and 2012, financing activities resulted in net cash outflows of $2.5 million and $17.8 million, respectively.

The $2.5 million used in financing activities during the year ended December 31, 2013 resulted primarily from $2.6 million for prepayment of capital leases for computer equipment and $1.4 million for the purchase of shares of our common stock withheld for minimum tax withholdings upon the vesting of a portion of certain restricted stock award grants, partially offset by $1.6 million in proceeds for the exercise of stock options.

The $17.8 million used in financing activities during the year ended December 31, 2012 resulted primarily from the $17.0 million repayment of our line of credit.

Contractual Obligations and Commitments

The following table summarizes our contractual obligations as of December 31, 2013 and the effect such obligations and commitments are expected to have on our liquidity and cash flow in future periods (in thousands):

| | Payments Due by Period | | | | | | |
|---|---|---|---|---|---|---|---|
| Contractual Obligations | 2014 | 2015 | 2016 | 2017 | 2018 | Thereafter | Total |
| Operating leases | $11,004 | $8,751 | $4,859 | $3,922 | $3,826 | $32,437 | $64,799 |
| Naming rights | 1,311 | 1,351 | 1,391 | — | — | — | 4,053 |
| Purchase obligations | 13,306 | — | — | — | — | — | 13,306 |
| Marketing, technology and other services | 7,026 | 3,008 | 1,683 | — | — | — | 11,717 |
| Total contractual cash obligations | $32,647 | $13,110 | $7,933 | $3,922 | $3,826 | $32,437 | $93,875 |

| | Amounts of Commitment Expiration Per Period | | | | | | |
|---|---|---|---|---|---|---|---|
| Other Commercial Commitments | 2014 | 2015 | 2016 | 2017 | 2018 | Thereafter | Total |
| Letters of credit | $1,580 | $— | $— | $— | $— | $— | $1,580 |

Operating Leases

From time to time we enter into operating leases for facilities and equipment for use in our operations. On May 13, 2013 we entered into a new operating lease for a warehouse facility that we have leased since September 2008. This lease extends the term of occupancy to August 31, 2026. The minimum future payments due under this new operating lease are included in the summary of future minimum lease payments for all operating leases in the table above.

Naming Rights

During 2011, we entered into a six-year agreement with the Oakland-Alameda County Coliseum Authority ("OACCA") for the right to name Oakland Alameda County Coliseum (now known as "O.co Coliseum"). Amounts represent annual payments due OACCA for the naming rights. We have the right to terminate this agreement at our sole option, subject to payment of a termination fee.

Purchase obligations

The amount of purchase obligations shown above is based on assumptions regarding the legal enforceability against us of inventory purchase orders we had outstanding at December 31, 2013. Under different assumptions regarding our rights to cancel our purchase orders or different assumptions regarding the enforceability of the purchase orders under applicable law, the amount of purchase obligations shown in the table above would be less.

Marketing, technology and other services

From time to time we enter into long-term contractual agreements for marketing, technology, or other services.

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Tax Contingencies

Our contractual obligations presented above exclude unrecognized tax contingencies, including interest and penalties, of $495,000 for which we cannot make a reasonably reliable estimate of the amount and period of payment. For further information regarding the application of ASC 740-10-5, see the information set forth under Item 15 of Part IV, "Financial Statements - Note 20 - Income Taxes," contained in the "Notes to Consolidated Financial Statements" of this Annual Report on Form 10-K.

Borrowings

U.S. Bank Financing Agreement

In November 2012, we repaid all amounts outstanding under our Financing Agreement with U.S. Bank National Association ("U.S. Bank"). The Financing Agreement expired in accordance with its terms on December 31, 2012, and we entered into a $3.0 million cash-collateralized line of credit agreement (the "Credit Agreement") with U.S. Bank for the issuance of letters of credit. Advances under the Credit Agreement bear interest at one-month LIBOR plus 1.0%. The Credit Agreement matures on December 31, 2014. There were no amounts outstanding on the Credit Agreement at December 31, 2013 and 2012.

At December 31, 2012, no amounts were outstanding under the Financing Agreement. At December 31, 2013 and 2012, letters of credit totaling $1.6 million and $1.8 million, respectively, were issued on our behalf collateralized by compensating cash balances held at U.S. Bank, which are included in Restricted cash in the accompanying consolidated balance sheets.

U.S. Bank Commercial Purchasing Card Agreement

We have a commercial purchasing card (the "Purchasing Card") agreement with U.S. Bank. We use the Purchasing Card for business purpose purchasing and must pay it in full each month. At December 31, 2013, $517,000 was outstanding and $4.5 million was available under the Purchasing Card. At December 31, 2012, $3.9 million was outstanding and $1.1 million was available under the Purchasing Card.

Capital leases

In March 2013, we entered into a capital lease arrangement for $2.6 million of computer equipment that will expire in 2017. We prepaid the entire $2.6 million shortly after entering into the agreement in order to obtain discounted pricing. As such, we have no future payment obligations under capital leases at December 31, 2013.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that would be material to investors.

Non-GAAP financial measures

Regulation G, Conditions for Use of Non-GAAP Financial Measures, and other SEC regulations regulate the disclosure of certain non-GAAP financial information.

Contribution (a non-GAAP financial measure) (which we reconcile to "Gross profit" in our statement of operations) consists of gross profit less sales and marketing expense and reflects an additional way of viewing our results. Contribution Margin is Contribution as a percentage of revenues. When viewed together with our GAAP results, we believe Contribution and Contribution margin provides management and users of the financial statements information about our ability to cover our operating costs, such as technology and general and administrative expenses. Contribution and Contribution Margin are used in addition to and in conjunction with results presented in accordance with GAAP and should not be relied upon to the exclusion of GAAP financial measures. You should review our financial statements and publicly-filed reports in their entirety and not rely on any single financial measure. The material limitation associated with the use of Contribution is that it is an incomplete measure of profitability as it does not include all operating expenses or non-operating income and expenses. Management compensates for these limitations when using this measure by looking at other GAAP measures, such as operating income (loss) and net income (loss).

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For further details on Contribution, see the calculation of this non-GAAP measure below (in thousands):

| | Year ended December 31, | | |
|---|---|---|---|
| | 2013 | 2012 | 2011 |
| Total net revenue | $1,304,217 | $1,099,289 | $1,054,277 |
| Cost of goods sold | 1,056,557 | 900,859 | 875,189 |
| Gross profit | 247,660 | 198,430 | 179,088 |
| Less: Sales and marketing expense | 91,609 | 63,467 | 61,813 |
| Contribution | $156,051 | $134,963 | $117,275 |
| Contribution margin | 12.0 % | 12.3 % | 11.1 % |

Free Cash Flow

Free cash flow (a non-GAAP financial measure) reflects an additional way of viewing our cash flows and liquidity that, when viewed with our GAAP results, provides a more complete understanding of factors and trends affecting our cash flows and liquidity. Free cash flow, which we reconcile to "Net cash provided by operating activities", is cash flows from operations reduced by "Expenditures for fixed assets, including internal-use software and website development." We believe that cash flows from operating activities is an important measure, since it includes both the cash impact of the continuing operations of the business and changes in the balance sheet that impact cash. However, we believe free cash flow is a useful measure to evaluate our business since purchases of fixed assets are a necessary component of ongoing operations and free cash flow measures the amount of cash we have available for mandatory debt service and financing obligations, changes in our capital structure, and future investments after we have paid all of our operating expenses. Therefore, we believe it is important to view free cash flow as a complement to our entire consolidated statements of cash flows as calculated below (in thousands):

| | Year ended December 31, | | |
|---|---|---|---|
| | 2013 | 2012 | 2011 |
| Net cash provided by operating activities | $83,645 | $28,145 | $25,663 |
| Expenditures for fixed assets, including internal-use software and website development | (18,067) | (12,489) | (8,741) |
| Free cash flow | $65,578 | $15,656 | $16,922 |

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We do not use derivative financial instruments in our investment portfolio, except, prior to January 1, 2013, for an interest rate cap agreement on our line of credit (which expired December 31, 2012), and we have no foreign exchange contracts. Our financial instruments consist of cash and cash equivalents, trade accounts and contracts receivable, accounts payable and long-term obligations. We consider investments in highly-liquid instruments with a remaining maturity of 90 days or less at the date of purchase to be cash equivalents.

Our exposure to market risk for changes in interest rates relates primarily to our short-term investments and short-term obligations; thus, fluctuations in interest rates would not have a material impact on the fair value of these securities. However, the fair values of our investments may be subject to fluctuations due to volatility of the stock market in general, investment-specific circumstances, and changes in general economic conditions.

At December 31, 2013, we had $148.7 million in cash and cash equivalents. Hypothetically, an increase or decrease in interest rates of one hundred basis points would have an estimated impact of $1.5 million on our earnings or loss, or the fair market value or cash flows of these instruments.

At December 31, 2013, we had assets consisting of precious metals totaling $9.7 million. Hypothetically, an increase or decrease in the market value of one hundred basis points would have an estimated impact of $97,000 on our earnings or loss, or the recorded value or cash flows of these instruments. Earnings resulting from increases in the market value of precious metals would be limited to losses incurred in the same fiscal year.

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At December 31, 2013, letters of credit totaling $1.6 million were outstanding under our credit facilities. Hypothetically, an increase or decrease in interest rates of one hundred basis points would have an estimated impact of $16,000 on our earnings or loss, or the cash flows of these instruments, if the letters of credit were fully drawn.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements and supplementary data required by this item are included in Part IV, Item 15 of this Form 10-K.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

(a) Disclosure Controls and Procedures

We maintain disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934 (the "Exchange Act"). The term disclosure controls and procedures means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

We carried out an evaluation required by the Exchange Act under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the 1934 Act, as of the end of the period covered by this report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and to provide reasonable assurance that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives as specified above. Management does not expect, however, that our disclosure controls and procedures will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

(b) Management's Report on Internal Control over Financial Reporting

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act.

Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness of internal control over financial reporting to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management has assessed the effectiveness of our internal control over financial reporting as of December 31, 2013. In making our assessment of the effectiveness of internal control over financial reporting, management used the criteria set forth in Internal Control—Integrated Framework (1992) issued by the Committee of Sponsoring

Organizations of the Treadway

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Commission ("COSO"). Based on this assessment, management has concluded that, as of December 31, 2013, our internal control over financial reporting was effective.

Our internal control over financial reporting is designed to provide reasonable assurance of achieving its objectives as specified above. Management does not expect, however, that our internal control over financial reporting will prevent or detect all error and fraud. Any control system, no matter how well designed and operated, is based upon certain assumptions and can provide only reasonable, not absolute, assurance that its objectives will be met. Further, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within the Company have been detected.

The effectiveness of our internal control over financial reporting as of December 31, 2013 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report which is in Item 9A(c).

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(c) Independent Registered Public Accounting Firm's Report on Internal Control Over Financial Reporting
Report of Independent Registered Public Accounting Firm
The Board of Directors and Stockholders
Overstock.com, Inc.:
We have audited Overstock.com, Inc.'s internal control over financial reporting as of December 31, 2013, based on criteria established in Internal Control—Integrated Framework (1992) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Overstock.com Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting (Item 9A(b)). Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.
We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.
A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.
Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.
In our opinion, Overstock.com, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2013, based on criteria established in Internal Control—Integrated Framework (1992) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Overstock.com, Inc. and subsidiaries as of December 31, 2013 and 2012, and the related consolidated statements of operations and comprehensive income (loss), changes in stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2013, and our report dated February 27, 2014 expressed an unqualified opinion on those consolidated financial statements.
/s/ KPMG LLP
Salt Lake City, Utah
February 27, 2014

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(d) Changes in Internal Control Over Financial Reporting

During the fiscal quarter ended December 31, 2013, there has not occurred any change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

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ITEM 9B. OTHER INFORMATION

None.

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## PART III

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information regarding our Executive Officers required by Item 10 of Part III is set forth in Item 1 of Part I under "Business—Executive Officers of the Registrant." Information required by Item 10 of Part III regarding our board of directors and any material changes to the process by which security holders may recommend nominees to the board of directors will be included in our definitive proxy statement for our 2014 annual meeting of stockholders, and is incorporated herein by reference. Information relating to compliance with Section 16(a) of the 1934 Act will be set forth in our definitive proxy statement for our 2014 annual meeting of stockholders and is incorporated herein by reference.

We have adopted a Code of Business Conduct and Ethics ("Code"), which is applicable to all employees of the Company, including the principal executive officer, principal financial officer, and principal accounting officer. The Code includes provisions that are specifically applicable to our senior financial officers. We intend to disclose any amendments to these provisions and any waivers from any of these provisions granted to our principal executive officer, principal financial officer or principal accounting officer in the Investor Relations section of our Website, www.overstock.com. We will provide a copy of the relevant portion to any person without any charge upon request in writing addressed to Overstock.com. Attn: Investor Relations, 6350 South 3000 East, Salt Lake City, UT 84121.

### ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item is incorporated by reference to our definitive proxy statement for the 2014 annual meeting of stockholders.

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ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND RELATED STOCKHOLDER MATTERS

Except as set forth herein, the information required by this Item is incorporated by reference to our definitive proxy statement for the 2014 annual meeting of stockholders.

The following graph compares the total cumulative stockholder return, on our common stock with the total cumulative return of the NASDAQ Market Index—U.S. ("NASDAQ Market Index") and the Morningstar Specialty Retail Index ("Morningstar Group Index") during the period commencing on January 1, 2009 through December 31, 2013. The graph assumes a $100 investment at the beginning of the period in our common stock, the NASDAQ Market Index and the Morningstar Group Index, and the reinvestment of any dividends. Historic stock price performance is not necessarily indicative of future stock price performance.

COMPARISON OF YEAR CUMULATIVE TOTAL RETURN

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item is incorporated by reference to our definitive proxy statement for the 2014 annual meeting of stockholders.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this Item is incorporated by reference to our definitive proxy statement for the 2014 annual meeting of stockholders.

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## PART IV

## ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

1. Financial Statements

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS



2. Financial Statement Schedule

Schedule II Valuation and Qualifying Accounts listed in (1) above is included herein. Schedules other than those listed above have been omitted as they are either not required, not applicable, or the information has otherwise been shown in the consolidated financial statements or notes thereto.

3. Exhibits

| Exhibits | (a) | |
|---|---|---|
| 3.1 (a) | | Amended and Restated Certificate of Incorporation |
| 3.2 | | Amended and Restated Bylaws (incorporated by reference to Exhibit 3.1 to our Report on Form 8-K (File No. 000-49799) filed on February 10, 2014). |